

FINAL
CITY COUNCIL
CITY OF WICHITA
KANSAS

City Council Meeting
09:30 a.m. July 28, 2009

First Floor Board Room
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Approve the minutes of the regular meeting on July 21, 2009

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. CONSENT PLANNING AGENDA (ITEMS 1 THROUGH 5)

1. *SUB 2008-17 -- Plat of Eliot Second Addition located on the south side of MacArthur Road, west of Tyler Road. (District IV)

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and approve first reading of the Ordinance.

2. *SUB 2008-91 -- Plat of Turkey Creek Commercial Addition located on the northeast corner of Pawnee and 135th Street West. (District IV)

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and approve first reading of the Ordinance.

3. *SUB 2009-36 -- Plat of Newmarket Square Phase III Addition located on the west side of Maize Road, north of 21st Street North. (District V)

RECOMMENDED ACTION: Approve the document and plat and authorize the necessary signatures.

4. *DER 2009-05 - Request for a Street Name Change from Foliage Court to Lakefront Circle located north of 13th Street North, west of Webb Road. (District II)

RECOMMENDED ACTION: Approve the street name change request and place the ordinance on first reading.

5. *A09-08 Request by Marie C. Eliot to annex lands generally located south of MacArthur Road and west of Tyler Road. (District IV)

RECOMMENDED ACTION: Approve the annexation request, place the ordinance on first reading, and authorize the necessary signatures.

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Allan Murdock, Housing Member is also seated with the City Council.

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. CONSENT AIRPORT AGENDA (ITEMS 1 AND 2)

1. *Emergency Purchase - Terminal Building Chiller - Mid-Continent Airport.

RECOMMENDED ACTION: Approve the emergency purchase in the amount of \$41,967.78.

2. *Tenant Facility Improvements - 1761 Airport Road Roof and HVAC and 2008 Re-roof Project. Wichita Mid-Continent Airport and Colonel James Jabara Airport.

RECOMMENDED ACTION: Approve the budget adjustment and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments

XII. CONSENT AGENDA (ITEMS 1 THROUGH 12)

1. Report of Board of Bids and Contracts dated July 27, 2009.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for License for Special Event.

August 8, 2009

Jason Dilts ROK ICT/Split Lip Rayfield on the Ramp 3350 George Washington Blvd

RECOMMENDED ACTION: Approve the licenses.

3. Change Orders:

- a. Old Town Drainage Improvement. (District VI)
- b. Central/Tyler Intersection Improvement. (District V)
- c. Street Paving in Moorings 10th Addition, west of Meridian, south of 53rd Street North. (District VI)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

4. Property Acquisitions:

- a. Partial Acquisition of 1557 South Hydraulic for the Hydraulic: Harry to Kellogg Improvement Project. (District I)
- b. Partial Acquisition of 11319 East Harry for the Greenwich, Harry to Kellogg Improvement Project. (District II)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

5. Minutes of Advisory Boards/Commissions

Board of Code Standards and Appeals, June 1, 2009
Wichita Historic Preservation Board, June 8, 2009
Wichita Airport Advisory Board, June 1, 2009
Wichita Public Library, June 16, 2009
Wichita Employees' Retirement System, May 20, 2009
Police & Fire Retirement, May 27, 2009
Wichita Employees' Retirement Board/Police & Fire Retirement Board, June 4, 2009

RECOMMENDED ACTION: Receive and file.

6. Douglas Street Lighting West of Oliver. (District II)

RECOMMENDED ACTION: Adopt the resolution and authorize the necessary signatures.

7. Repair or Removal of Dangerous and Unsafe Structures. (Districts I and III)

Property Address	Council District
a. 2048 North Minneapolis	I
b. 1608 North Volusia	I
c. 1040 South Vassar	III

RECOMMENDED ACTION: Adopt the resolutions to schedule a public hearing before the City Council on September 15, 2009 at 9:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

8. Aquifer Storage and Recovery Diversion Well Investigation Project.

RECOMMENDED ACTION: Approve the Agreement for Professional Services; approve the expenditure; and authorize the necessary signatures.

9. Petition to Renovate Building Facade in the Core Area. (District I)

RECOMMENDED ACTION: Approve the petition, adopt the resolution, and authorize the necessary signatures.

10. Community Event with alcohol consumption – Resolution All America City Street Party. (District VI)

RECOMMENDED ACTION: Adopt the Resolution and authorize the necessary signatures.

11. Second Reading Ordinances: (First Read July 21, 2009)

a. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

12. National Night Out Concert and Family Event Agreement.

RECOMMENDED ACTION: Approve the Park Use Agreement.

Adjournment

Workshop to follow

**City of Wichita
City Council Meeting
July 28, 2009**

TO: Mayor and City Council Members

SUBJECT: SUB 2008-17 -- Plat of Eliot Second Addition located on the south side of MacArthur Road, west of Tyler Road. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (13-0)

Background: This site, consisting of one lot on 2.02 acres, is a replat of the Eliot Addition and includes unplatted property to the west. This site is located in the County adjoining Wichita's city limits and annexation is required. The annexation case (A09-08) is on the same agenda as the plat. A zone change (ZON 2008-20) from SF-20 Single-family Residential to GC General Commercial has been approved.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for future water and sewer improvements. This site is located within the noise impact area of Wichita Mid-Continent Airport; therefore, a Restrictive Covenant and Avigational Easement have been submitted.

The plat has been approved by the Metropolitan Area Planning Commission, subject to conditions. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Financial Considerations: None.

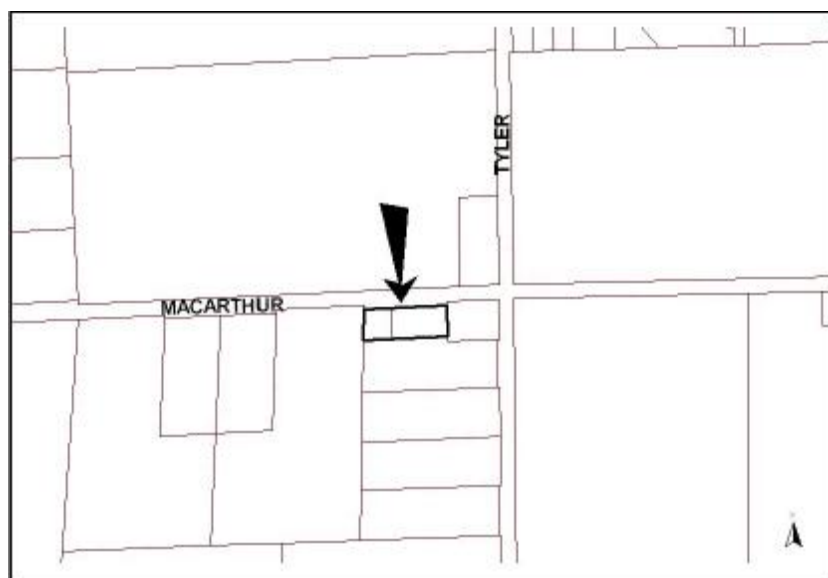
Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Certificate of Petitions, Restrictive Covenant and Avigational Easement will be recorded with the Register of Deeds.

The ordinance has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and approve first reading of the Ordinance.

Attachments: Certificate of Petitions
Restrictive Covenant
Avigational Easement
Zoning Ordinance



First Published in the Wichita Eagle on July 31, 2009

RESOLUTION NO. 09-248

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90446 (SOUTH OF MACARTHUR, WEST OF TYLER) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90446 (SOUTH OF MACARTHUR, WEST OF TYLER) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90446 (south of MacArthur, west of Tyler).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Nineteen Thousand Dollars (\$19,000) exclusive of the cost of interest on borrowed money, with 100 percent of the total cost payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after July 1, 2009, exclusive of the costs of temporary financing.

That, accordance with the provisions of K.S.A. 12-6a19, a benefit fee to be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of Two Thousand Forty-Seven Dollars (\$2,047).

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

ELIOT SECOND ADDITION

Lot 1, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvements for which the improvement district shall be liable shall be on a fractional basis: Lot 1, Block A ELIOT SECOND ADDITION shall pay an amount equal to 100% of the total cost of the improvements.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of July, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK
(SEAL)

First Published in the Wichita Eagle on July 31, 2009

RESOLUTION NO. _09-249

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 532, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF MACARTHUR, WEST OF TYLER) 468-84623 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 532, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF MACARTHUR, WEST OF TYLER) 468-84623 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 532, Southwest Interceptor Sewer (south of MacArthur, west of Tyler) 468-84623.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Twenty-Six Thousand Dollars (\$26,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after July 1, 2009, exclusive of the costs of temporary financing.

That, in accordance with the provisions of K.S.A. 12-a619, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing sanitary sewer main, such benefit fee to be in the amount of Three Thousand Nine Hundred Thirty-Six Dollars (\$3,936).

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

ELIOT SECOND ADDITION

Lot 1, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvements for which the improvement district shall be liable shall be on a fractional basis. Lot 1, Block A ELIOT SECOND ADDITION, shall pay an amount equal to 100% of the total cost of the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6 That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of July, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

ORDINANCE NO. 48-397

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2008-20

Zone change request from SF-20 Single-family Residential to GC General Commercial, for property described as:

Lot 1, Block A, Eliot Second Addition

Generally located on the south side of MacArthur Road and west of Tyler Road.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

Adopted this 4th day of August 2009.

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf, City Attorney

CERTIFICATE

CITY OF WICHITA)
SEDGWICK COUNTY) SS
STATE OF KANSAS)

I, Marie C. Eliot, owner of Lot 1, Block A, Eliot Second Addition, Sedgwick County, Kansas, do hereby certify that petitions for the following improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Water Main Improvements
2. Sanitary Sewer Improvements

As a result of the above-mentioned petitions for improvements, lots or portions thereof within Eliot Second Addition, Sedgwick County, Kansas may be subject to special assessments assessed thereto for the cost of construction the above-described improvements.

Signed this 2nd day of JUNE 2, 20 09.

Marie C. Eliot
Marie C. Eliot

CITY OF WICHITA)
SEDGWICK COUNTY) SS
STATE OF KANSAS)

The foregoing instrument was acknowledged before me this JUNE 2,
20 09.

by MARIE C. ELIOT

Seal or Stamp



[Signature], Notary Public
(signature of notary officer)

My appointment expires: 1-21, 20 12.

RESTRICTIVE COVENANT

THIS DECLARATION made this 2nd day of JUNE, 2009, by
MARIE C. ELIOT,

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

Eliot Second Addition

WHEREAS, the Declarant's property is located near Mid-Continent Airport and is accordingly subject to considerable noise from the operation of aircraft which may infringe upon the enjoyment of said property and may affect the health and/or well being of the property's users, and

WHEREAS, the City of Wichita, in connection with approval of the plat of said addition, shall require that proper consideration be given to abate outside noise pollution within buildings constructed on said property:

NOW, THEREFORE, Declarant hereby declares that Eliot Second Addition, Wichita, Sedgwick County, Kansas, shall be and the same is subjected to the following restrictive covenant, to wit:

That any structure constructed on the premises shall be so designed and constructed as to minimize outside noise pollution in compliance with applicable City of Wichita and/or Sedgwick County codes and with due consideration given to the intended use of the structure. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall be binding upon the successors and assigns, jointly and severally, by these presents.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita and or County. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

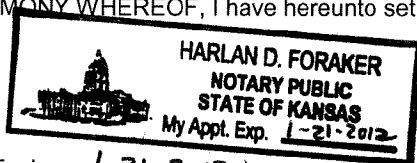
Executed the date and year first above written.

By Marie C. Eliot
Marie C. Eliot

STATE OF KANSAS)
)
SEDGWICK COUNTY) SS

BE IT REMEMBERED, that on this 2nd day of JUNE, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came MARIE C. ELIOT, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same, for and on behalf of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.



Harlan D. Foraker
Notary Public

(My Commission Expires: 1-21-2012)

SEAL

AVIGATIONAL EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for a good and valuable considerations, the receipt of which is hereby acknowledged, that Marie C. Eliot does hereby grant a permanent Avigational Easement to the public authorized by law to own and operate public-owned airports in Sedgwick County, Kansas, for the use of "navigable Airspace" as defined by the Federal Aviation Act of 1958, over all of the following described real estate, to wit:

Property platted as Lot 1, Block A, Eliot Second Addition, an addition to Wichita, Sedgwick County, Kansas.

By virtue of this easement, the grantors, for and on behalf of themselves and all successors in interest to any and all of the real property above described, waives as to the public authority only any and all claims for damage of any kind whatsoever incurred as a result of aircraft using the "Navigable Airspace" granted herein. This easement does not grant or convey any surface use rights, nor is it to be construed to grant any right to private persons or corporations.

"Navigable Airspace" means air space above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101 (24) 49 U.S. Code 1301, and shall include air space needed to insure safety in take-off and landing of aircraft.

To have and to hold said easement forever.

IN WITNESS WHEREOF:

The Grantors have signed these presents this 2nd day of June, 2009

Marie C. Eliot

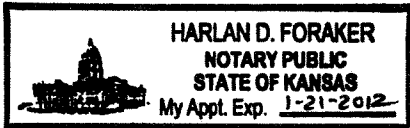
A handwritten signature in cursive script that reads "Marie C. Eliot". The signature is written in dark ink and is positioned above a horizontal line.

STATE OF KANSAS)
SEDGWICK COUNTY) ^{ss}

Personally appeared before me a notary public in and for the County and State aforesaid

Marie C. Eliot, to me personally known to be the same person who executed the foregoing instrument of writing and said person duly acknowledged the execution thereof.

Dated at Wichita, Kansas, this 2nd day of June, 2009.



A handwritten signature in black ink, appearing to read "H. D. Foraker", written over a horizontal line.

Notary Public

My Commission Expires: 1-21-2012

**City of Wichita
City Council Meeting
July 28, 2009**

TO: Mayor and City Council Members

SUBJECT: SUB 2008-91 -- Plat of Turkey Creek Commercial Addition located on the northeast corner of Pawnee and 135th Street West. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)

Background: This site, consisting of three lots on 8.7 acres, is located in Wichita's city limits. A zone change (ZON 2008-50) from SF-5 Single-family Residential to LC Limited Commercial has been approved. The Turkey Creek Commercial Park Community Unit Plan (CUP 2008-33, DP-314) has also been approved for this site. A Notice of Community Unit Plan (CUP) has been submitted identifying the approved CUP and its special conditions for development on this property.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for sewer, water and paving improvements. A Restrictive Covenant has been submitted to permit future cross-lot access with the abutting property owners to the north along 135th Street West, effective upon platting of that property for any commercial development. A Grant of Joint Access Easement has been submitted to establish joint access openings. In accordance with the CUP approval, a Declaration of Cross-Lot Access and Easement has been submitted to assure internal vehicular movement between the lots.

The plat has been approved by the Metropolitan Area Planning Commission, subject to conditions.

Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Financial Considerations: None.

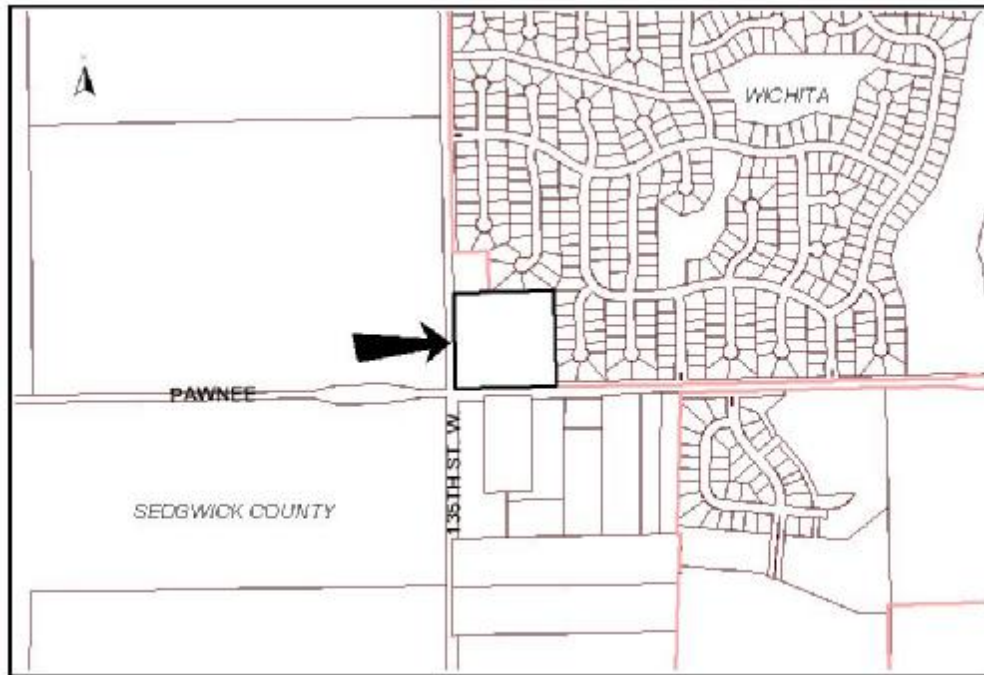
Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Notice of Community Unit Plan, Certificate of Petitions, Restrictive Covenant, Grant of Joint Access Easement and Declaration of Cross-Lot Access and Easement will be recorded with the Register of Deeds.

The ordinance has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and approve first reading of the Ordinance.

Attachments: Notice of Community Plan
Certificate of Petitions
Restrictive Covenant
Grant of Joint Access Easement
Declaration of Cross-Lot Access and Easement



First Published in the Wichita Eagle on July 31, 2009

RESOLUTION NO. 09-250

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90445 (NORTH OF PAWNEE, EAST OF 135TH ST. WEST) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90445 (NORTH OF PAWNEE, EAST OF 135TH ST. WEST) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90445 (north of Pawnee, west of 135th St. West).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Six Thousand Dollars (\$106,000) exclusive of the cost of interest on borrowed money, with 75.09 percent of the total cost payable by the improvement district and 24.91 percent of the total cost payable by the City of Wichita from Water Department Water Utility Improvement Funds. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after July 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

TURKEY CREEK COMMERCIAL ADDITION

Lots 1 through 3, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 and 2, Block A TURKEY CREEK COMMERCIAL ADDITION shall each pay 1/4 of the total cost of the improvements; and Lot 3, Block A TURKEY CREEK COMMERCIAL ADDITION shall pay 2/4 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of July, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK
(SEAL)

First Published in the Wichita Eagle on July 31, 2009

RESOLUTION NO. 09-251

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 15, MAIN 6, COWSKIN INTERCEPTOR SEWER, (NORTH OF PAWNEE, EAST OF 135TH ST. WEST) 468-84621 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 15, MAIN 6, COWSKIN INTERCEPTOR SEWER, (NORTH OF PAWNEE, EAST OF 135TH ST. WEST) 468-84621 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 15, Main 6, Cowskin Interceptor Sewer, (north of Pawnee, east of 135th St. West) 468-84621.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Forty-Eight Thousand Dollars (\$48,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after July 1, 2009 exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

TURKEY CREEK COMMERCIAL ADDITION

Lots 1 through 3, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 and 2, Block A TURKEY CREEK COMMERCIAL ADDITION shall each pay 1/4 of the total cost of the improvements; and Lot 3, Block A TURKEY CREEK COMMERCIAL ADDITION shall pay 2/4 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of July, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

RESOLUTION NO. 09-252

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING LEFT TURN CENTER LANE IMPROVEMENTS IN PAWNEE AVENUE AND 135TH ST. WEST AND RIGHT TURN DECEL LANES TO ALL FULL MOVEMENT APPROACHES (NORTH OF PAWNEE, EAST OF 135TH ST. WEST) 472-84844 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING LEFT TURN CENTER LANE IMPROVEMENTS IN PAWNEE AVENUE AND 135TH ST. WEST AND RIGHT TURN DECEL LANES TO ALL FULL MOVEMENT APPROACHES (NORTH OF PAWNEE, EAST OF 135TH ST. WEST) 472-84844 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing left turn center lane improvements in Pawnee Avenue and 135th St. West and right turn decel lanes to all full movement approaches (north of Pawnee, east of 135th St. West) 472-84844.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to Eighty-Six Thousand Dollars (\$86,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after July 1, 2009.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

TURKEY CREEK COMMERCIAL ADDITION
Lots 1 through 3, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 and 2, Block A TURKEY CREEK COMMERCIAL ADDITION shall each pay 1/4 of the total cost of the improvements; and Lot 3, Block A TURKEY CREEK COMMERCIAL ADDITION shall pay 2/4 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of July 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

ORDINANCE NO. 48-398

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2008-50

Zone change request from SF-5 Single-family Residential to LC Limited Commercial, for property described as:

Lots 1, 2 and 3, Block A, Turkey Creek Commercial Addition

Generally located on the northeast corner of Pawnee and 135th Street West.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

Adopted this 4th day of August 2009.

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf, City Attorney

NOTICE OF COMMUNITY UNIT PLAN
TURKEY CREEK COMMERCIAL PARK - DP-314

THIS NOTICE made this 8th day of July, 2009, by the John E. Dugan Family Partnership, L.P., a Kansas limited partnership, hereinafter called "Declarant,"

WITNESSETH

WHEREAS, Declarant is the owner of the following-described property:

TURKEY CREEK COMMERCIAL ADDITION
Lots 1 through 3, Block A

and

WHEREAS, Declarant is desirous to file notice that a community unit plan approved by the City of Wichita is on file with the Wichita-Sedgwick County Metropolitan Area Planning Department, located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

NOW, THEREFORE, the Declarant gives notice that the approved community unit plan named Turkey Creek Commercial Park Community Unit Plan, DP-314 has placed restrictions on the use and requirements on the development of the above-described real property. The community unit plan shall be binding on the owners, their heirs, or successors or assigns and is a document running with the land and is binding on all successors in title to Lots 1 through 3, Block A, TURKEY CREEK COMMERCIAL ADDITION, Wichita, Sedgwick County, Kansas.

EXECUTED the day and year first written above.

John E. Dugan Family Partnership, L.P.

By: John E. Dugan Revocable Trust #1, Manager

By: _____

John E. Dugan, Trustee

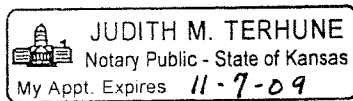
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

BE IT REMEMBERED, that on this 8th day of July, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came John E. Dugan as Trustee of the John E. Dugan Revocable Trust #1, Manager of the John E. Dugan Family Partnership, L.P., a Kansas limited partnership, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited partnership.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-09)



CERTIFICATE OF PETITION

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

We, the John E. Dugan Family Partnership, L.P., a Kansas limited partnership, owners of TURKEY CREEK COMMERCIAL ADDITION, Wichita, Sedgwick County, Kansas do hereby certify that petition(s) for the following improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Sanitary Sewer Improvements
2. Water Main Improvements
3. Left Turn Lane and Decel Lane Improvements on Pawnee Ave. and 135th St. W.

As a result of the above-mentioned petition(s) for improvements, all lots or portions thereof within the Turkey Creek Commercial Addition may be subject to special assessments assessed thereto for the cost of constructing the above-described improvements.

Signed this 8th day of July, 2009.

John E. Dugan Family Partnership, L.P.
By: John E. Dugan Revocable Trust #1, Manager

By: _____

John E. Dugan, Trustee

Certificate of Petition
Page 2 of 2

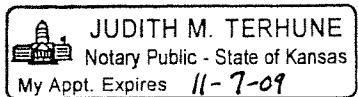
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 8th day of July, 2009,
before me, the undersigned, a Notary Public, in and for the County and State
aforesaid, came John E. Dugan as Trustee of the John E. Dugan Revocable Trust #1,
Manager of the John E. Dugan Family Partnership, L.P., a Kansas limited partnership,
personally known to me to be the same persons who executed the within instrument
of writing and such persons duly acknowledged the execution of the same on behalf,
and as the act and deed of said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-09)



RESTRICTIVE COVENANT
FOR FUTURE CROSS LOT ACCESS AGREEMENT

THIS RESTRICTIVE COVENANT made this 8th day of July, 2009, by the John E. Dugan Family Partnership, L.P., a Kansas limited partnership, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property, to-wit:

TURKEY CREEK COMMERCIAL ADDITION

Lot 3, Block A

WHEREAS, the plat of the aforesaid Turkey Creek Commercial Addition contains provisions for access control along 135th St. W., as recommended by the City of Wichita Engineering Department, and

WHEREAS, as a platting requirement of the Wichita/Sedgwick County Planning Commission, the Declarant hereby agrees to execute, in the future, a cross lot access agreement, for the benefit of said Lot 3, Block A, Turkey Creek Commercial Addition and the property immediately adjacent to the north, as provided for herein.

NOW, THEREFORE, Declarant hereby declares the following:

1. The Declarant acknowledges its willingness to enter into a cross lot access agreement creating access rights with the owner of the property immediately adjacent to the north ("Adjacent Property") of Lot 3, Block A, Turkey Creek Commercial Addition at some future date if said adjacent property is developed for non-residential use and the owner of said Adjacent Property desires to enter into a cross lot access agreement.
2. The Declarant hereby acknowledges its willingness to grant a cross lot access agreement over a portion of the north property line of said Turkey Creek Commercial Addition, with the exact location to be determined at the time of formalizing the agreement.

Restrictive Covenant

Page 2 of 2

Any cross lot access agreement entered into shall contain provisions regarding the allocation of the costs of constructing the initial joint access drive, modifications to such drive or parking lot (if already constructed), and maintenance costs.

This restrictive covenant shall be binding on the Declarant, its successors or assigns and is a covenant running with the land and is binding on all successors in title for the above described real property located in Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

John E. Dugan Family Partnership, L.P.

By: John E. Dugan Revocable Trust #1, Manager

By: John E. Dugan
John E. Dugan, Trustee

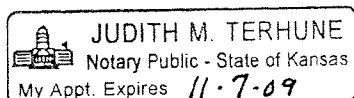
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

BE IT REMEMBERED, that on this 8th day of July, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came John E. Dugan as Trustee of the John E. Dugan Revocable Trust #1, Manager of the John E. Dugan Family Partnership, L.P., a Kansas limited partnership, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited partnership.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-09)



GRANT OF JOINT ACCESS EASEMENT

WHEREAS, the undersigned is the owner of the real property hereinafter described:

Lots 1 through 3, Block A,
TURKEY CREEK COMMERCIAL ADDITION,
Wichita, Sedgwick County, Kansas

and

WHEREAS, the plat of TURKEY CREEK COMMERCIAL ADDITION, Wichita, Sedgwick County, Kansas, has provisions for access control on Pawnee for Lots 1 and 3, Block A, and on 135th St. W. for Lots 1 and 2, Block A, and therefore requires mutual and joint access easement for ingress and egress purposes between Lots 1, 2, and 3, Block A, in said TURKEY CREEK COMMERCIAL ADDITION,

and,

WHEREAS it is determined that it is in the best interests of the parties and their successors and assigns that a certain common easement, as hereinafter described, be established and conveyed for the use and benefit of all the parties hereto, their successors, assigns, and licensees.

NOW, THEREFORE, be it known that the undersigned does hereby grant and convey for itself, its successors, grantees, licensees and assignees in interest, the right to use for ingress and egress the joint access easement as are hereinafter setforth.

Joint access easement between Lots 1 and 3, Block A, TURKEY CREEK COMMERCIAL ADDITION, for ingress and egress to Pawnee, over and across the following real estate:

That part of Lots 1 and 3, Block A, Turkey Creek Commercial Addition, Wichita, Sedgwick County, Kansas described as follows: Beginning at the most southerly corner common to said Lots 1 and 3; thence N89°50'50"W along the south line of said Lot 1, 15.00 feet; thence N00°03'21"W parallel with the lot line common to said Lots 1 and 3, 52.00 feet; thence S89°50'50"E parallel with the south line of said Lot 1, 15.00 feet to a point on said common lot line; thence continuing S89°50'50"E parallel with the south line of said Lot 3, 15.00 feet; thence S00°03'21"E parallel with said common lot line, 52.00 feet to a point on the south line of said Lot 3; thence N89°50'50"W along the south line of said Lot 3, 15.00 feet to the point of beginning.

and,

Joint access easement between Lots 1 and 2, Block A, TURKEY CREEK COMMERCIAL ADDITION, for ingress and egress to 135TH St. W., over and across the following real estate:

That part of Lots 1 and 2, Block A, Turkey Creek Commercial Addition, Wichita, Sedgwick County, Kansas described as follows: Beginning at the most westerly corner common to said Lots 1 and 2; thence S00°03'21"E along the west line of said Lot 1, 15.00 feet; thence S89°50'50"E parallel with the lot line common to said Lots 1 and 2, 52.00 feet; thence N00°03'21"W parallel with the west line of said Lot 1, 15.00 feet to a point on said common line; thence continuing N00°03'21"W, 15.00 feet; thence N89°50'50"W parallel with said common lot line, 54.25 feet to a point on the west line of said Lot 2; thence S08°35'12"E along the west line of said Lot 2, 15.18 feet to the point of beginning.

It is agreed by and between the parties hereto that such easements shall be perpetual easements until and unless amended, revoked, or released by all of the parties in interest or their successors or assigns and that the same shall be a covenant running with the land and shall be binding upon the grantors herein, their grantees, their heirs, assigns, licensees, successors, and assignees in interest.

It is further contracted and covenanted that such easements shall be for driveway, ingress, and egress purposes and such easements shall not be used for parking purposes or utilized in any manner so as to impede or inconvenience the use of such easement for the purposes herein setforth. Maintenance of said easements shall be in the mutual interests and responsibilities to all parties interest and their successors, heirs, and/or assigns.

Grant of Joint Access Easement
Page 3 of 3

In testimony whereof the undersigned has set their hands this 8th day of July, 2009.

John E. Dugan Family Partnership, L.P.
By: John E. Dugan Revocable Trust #1, Manager

By: John E. Dugan
John E. Dugan, Trustee

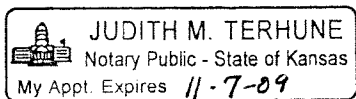
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

BE IT REMEMBERED, that on this 8th day of July, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came John E. Dugan as Trustee of the John E. Dugan Revocable Trust #1, Manager of the John E. Dugan Family Partnership, L.P., a Kansas limited partnership, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited partnership.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-09)



DECLARATION OF CROSS LOT ACCESS AND EASEMENT

This Declaration is made as of this 8th day of July, 2009, by the undersigned.

- A. The undersigned are the owners of Lots 1 through 3, Block A, TURKEY CREEK COMMERCIAL ADDITION, Wichita, Sedgwick County, Kansas.
- B. The undersigned desires to provide for cross lot access and easements for pedestrian and vehicular traffic over and across all Lots in said TURKEY CREEK COMMERCIAL ADDITION.

NOW, THEREFORE, the undersigned hereby declares, establishes and grants to and for the benefit of each of their respective lots, for the convenience of the owners and employees, customers, and invitees of the owners thereof, mutual non-exclusive easements and rights-of-way for the purpose of ingress and egress of vehicular and pedestrian traffic along and across those portions of the respective parcels on said Lots to be established as driveways and sidewalks from time to time.

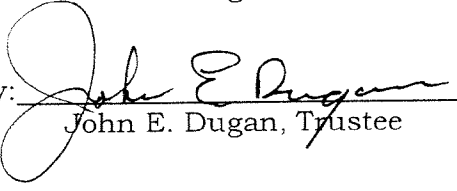
Said easements are for the purpose of providing ingress and egress between and for the benefit of each of the parcels on said lot, the owners thereof, their employees, customers and invitees. There shall be erected no continual fence or other barrier which would prevent or obstruct the passage of such vehicular and pedestrian traffic between said parcels; provided, however, that this Declaration shall not be construed to create any rights in the general public nor as a dedication to public use of any portion of said parcels on said Lots.

The easements herein granted are superior and paramount to the rights of the owner of the servient estates so created and shall be deemed covenants that run with the land and shall inure to the benefit of and be binding upon the owners of said Lots, their successors and assigns.

Declaration of Cross Lot Access and Easement
Page 2 of 2

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.


John E. Dugan Family Partnership, L.P.
By: John E. Dugan Revocable Trust #1, Manager

By: 
John E. Dugan, Trustee

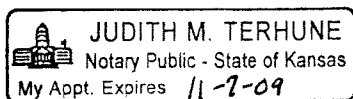
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 8th day of July, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came John E. Dugan as Trustee of the John E. Dugan Revocable Trust #1, Manager of the John E. Dugan Family Partnership, L.P., a Kansas limited partnership, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.


Notary Public

(My Appointment Expires: 11-7-09)



**City of Wichita
City Council Meeting
July 28, 2009**

TO: Mayor and City Council Members

SUBJECT: SUB 2009-36 -- Plat of Newmarket Square Phase III Addition located on the west side of Maize Road, north of 21st Street North. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)

Background: This site, consisting of three lots on 16 acres, is a replat of Evergreen Addition and is located in Wichita's city limits.

Analysis: Water and sewer services are available to serve the site. A Declaration of Cross-Lot Access and Easement has been submitted to assure internal vehicular movement between the lots.

The plat has been approved by the Metropolitan Area Planning Commission, subject to conditions.

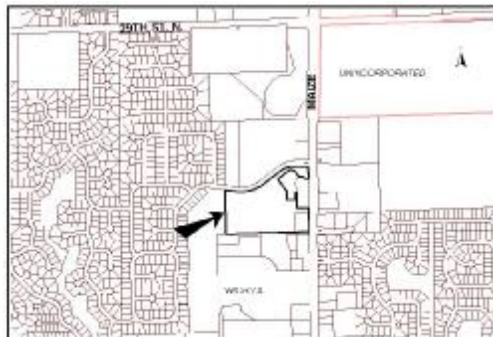
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Declaration of Cross-Lot Access and Easement will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the document and plat, authorize the necessary signatures.

Attachment: Declaration of Cross-Lot Access and Easement



DECLARATION OF CROSS LOT ACCESS AND EASEMENT

This Declaration is made as of this 10th day of July, 2009, by the undersigned.

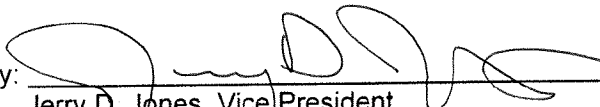
A. The undersigned is/are the owner(s) of Lots 1, 2 & 3, Block 1, Newmarket Square Phase III Addition to Wichita, Sedgwick County, Kansas.

B. The undersigned desires to provide for cross lot access and easements for pedestrian and vehicular traffic over and across said Lots.

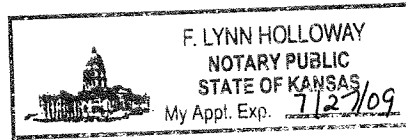
NOW, THEREFORE, the undersigned hereby declares, establishes and grants to and for the benefit of each of their respective lots, for the convenience of the owners and employees, customers, and invitees of the owners thereof, mutual non-exclusive easements and rights-of-way for the purpose of ingress and egress of vehicular and pedestrian traffic along and across those portions of the respective Lots to be established as driveways and sidewalks from time to time. Said easements are for the purpose of providing ingress and egress between and for the benefit of each of the Lots, the owners thereof, their employees, customers and invitees. There shall be erected no fence or other barrier which would prevent or obstruct the passage of such vehicular and pedestrian traffic between said Lots; provided, however, that this Declaration shall not be construed to create any rights in the general public nor as a dedication to public use of any portion of said Lots. The easements herein granted are superior and paramount to the rights of the owner of the servient estates so created and shall be deemed covenants that run with the land and shall inure to the benefit of and be binding upon the owners of said Lots, their successors and assigns.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

SOCORA VILLAGE COMPANY

By: 
Jerry D. Jones, Vice President

STATE OF KANSAS)
)SS
SEDGWICK COUNTY)



Personally appeared before me a notary public in and for the County and State aforesaid Jerry D. Jones, Vice President of Socora Village Company, to me personally known to be the same person who executed the foregoing instrument of writing and said person duly acknowledged the execution thereof.

Dated this 10th day of July, 2009.

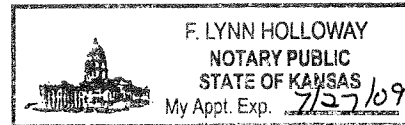
F. Lynn Holloway
Notary Public

My Commission Expires 7/27/09

BUILDING 25, LLC

By: [Signature]
Jerry D. Jones, Vice President

STATE OF KANSAS)
)SS
SEDGWICK COUNTY)



Personally appeared before me a notary public in and for the County and State aforesaid Jerry D. Jones, Vice President of Building 25, LLC, to me personally known to be the same person who executed the foregoing instrument of writing and said person duly acknowledged the execution thereof.

Dated this 10th day of July, 2009.

F. Lynn Holloway
Notary Public

My Commission Expires 7/27/09

City of Wichita
City Council Meeting
July 28, 2009

To: Mayor and City Council

Subject: A09-08 Request by Marie C. Eliot to annex lands generally located south of MacArthur Road and west of Tyler Road. (District IV)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Recommendation: Approve the annexation request.

Background: The City has received a request to annex 0.62 acres of land generally located south of MacArthur Road and west of Tyler Road. The annexation area abuts the City of Wichita to the north and east of the property. The annexation area is unplatted; however, the property is part of Eliot Second Addition, which is scheduled for City Council action on the same agenda as the annexation request. Annexation of the property is a condition of the plat.

Analysis:

Land Use and Zoning: The annexation area consists of approximately 0.62 acres zoned “SF-20” Single Family and is undeveloped. On April 14, 2009, the Board of Sedgwick County Commissioners approved a zone change for the property to “GC” General Commercial subject to the condition of platting. The owner plans to use the property to expand a self-storage warehouse facility located immediately east of the property requested for annexation. The adjacent property to the north is zoned “SF-5” Single Family and is part of the approach to Mid-Continent Airport. The adjacent property to the south is zoned “SF-20” Single Family and is developed with a single family residence owned by the applicant. The adjacent property to the east is zoned “GC” General Commercial and is developed with a self-storage warehouse facility owned by the applicant. The adjacent property to the west is zoned “SF-20” Single Family and is used for agriculture.

Public Services: Water and sanitary sewer service are not available to serve the subject property at this time. As a condition of platting, the property owner has been required to submit a petition for future water and sanitary sewer service.

Street System: The subject property has access to MacArthur Road, a two-lane arterial. As a condition of platting, access to MacArthur from the subject property will be from an existing access drive located on the applicant’s other property located immediately east of the subject property.

Public Safety: Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. Fire Station No. 12 at 3443 S. Meridian is the nearest fire station to the site. Upon annexation, police protection will be provided to the area by the Patrol West Bureau of the Wichita Police Department, headquartered at 661 N. Elder.

Parks: Pawnee Prairie Park located approximately two miles north of the subject properties at 2625 S. Tyler is the nearest park. Pawnee Prairie Park is a 625 acre regional park that is designated as a Wichita Wild Habitat area. Facilities include a five-mile bridle trail, an eight-mile nature trail, and a nature center. According to the Parks, Recreation and Open Space Plan, adopted on January 6, 2009, a proposed pathway has been identified along the Cowskin Creek located north and east of the subject property and proposed park target areas have been identified east, west, and south of the subject property.

School District: The annexation property is part of the Unified School District 261 (Haysville School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2030 Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands is not contained in County records, as the property is a portion of another tract and the balance of the tract is not being annexed. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property and the current mill levy. At this time, the property owner is anticipating approximately one self-storage building to be constructed within the next year. The total appraised value of the commercial development after completion is estimated at \$66,000. Assuming the current City levy remains about the same, this would roughly yield a total of \$528 in City annual tax revenues.

Goal Impact: Approving the annexation request would impact Wichita's goal to ensure efficient infrastructure, for annexation of this property would assist the City in satisfying the demand for new infrastructure needed to support growth and development.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, *et seq.*

Recommendations/Actions: Approve the annexation request, place the ordinance on first reading and authorize the necessary signatures.

Attachment: Map Sheet
Ordinance

OCA150004
PUBLISHED IN THE WICHITA EAGLE ON AUGUST 7, 2009

ORDINANCE NO. 48-400

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN
BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE
LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS.
(A09-08)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS:

SECTION 1. The governing body, under the authority of K.S.A. 12-519, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District IV respectively:

A tract of land in the E1/3 of the N1/2 of the NE1/4 of Sec. 17, Twp. 28-S, R-1-W of the 6th P.M., Sedgwick County, Kansas described as commencing at the N.E. Corner of said NE1/4; thence west, along the north line of said NE1/4, 630 feet to the N.W. Corner of the plat of Eliot Addition for a point of beginning; thence continuing west, along the north line of said NE1/4, 154.09 feet to the N.W. Corner of the E1/3 of the N1/2 of said NE1/4; thence south, along the west line of the E1/3 of the N1/2 of said NE1/4, 232.32 feet; thence east, parallel with the north line of said NE1/4, 160.39 feet to the S.W. Corner of the plat of Eliot Addition; thence north, along the west line of the plat of Eliot Addition, 232 feet to the point of beginning, EXCEPT for that part designated as MacArthur Road.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this August 4, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

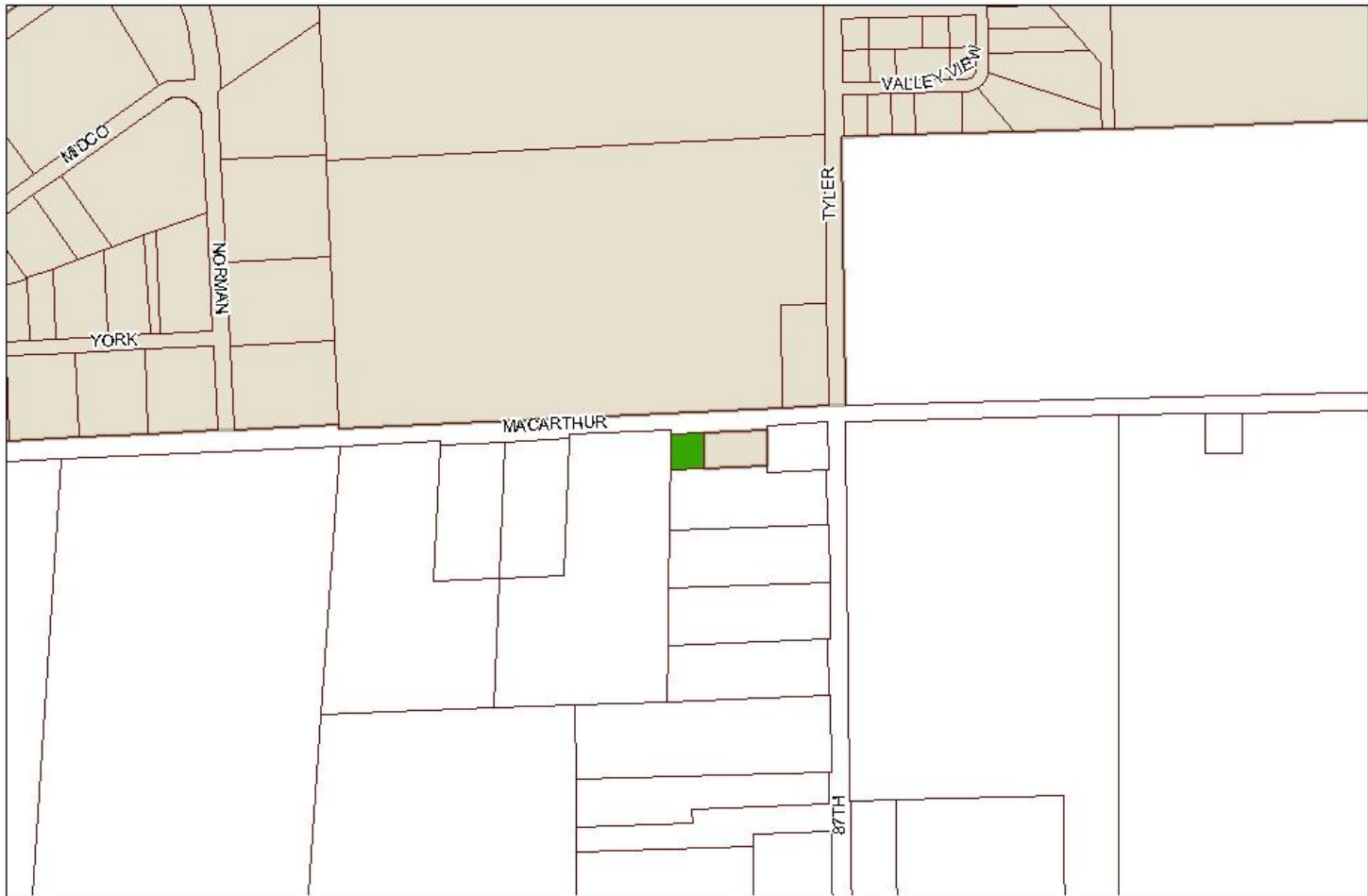
Approved as to form:

Gary E. Rebenstorf, Director of Law

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

General Location: South of MacArthur Road and west of Tyler Road – District IV

Address: 4039 S. Tyler		Reason(s) for Annexation:	
0.62	Area in Acres	<input checked="" type="checkbox"/> X	Request
0	Existing population (est.)	<input type="checkbox"/>	Unilateral
0	Existing dwelling units	<input type="checkbox"/>	Island
0	Existing industrial/commercial units	<input type="checkbox"/>	Other:
Existing zoning: "SF-20" Single Family			



WICHITA

SEDGWICK COUNTY

A09-08

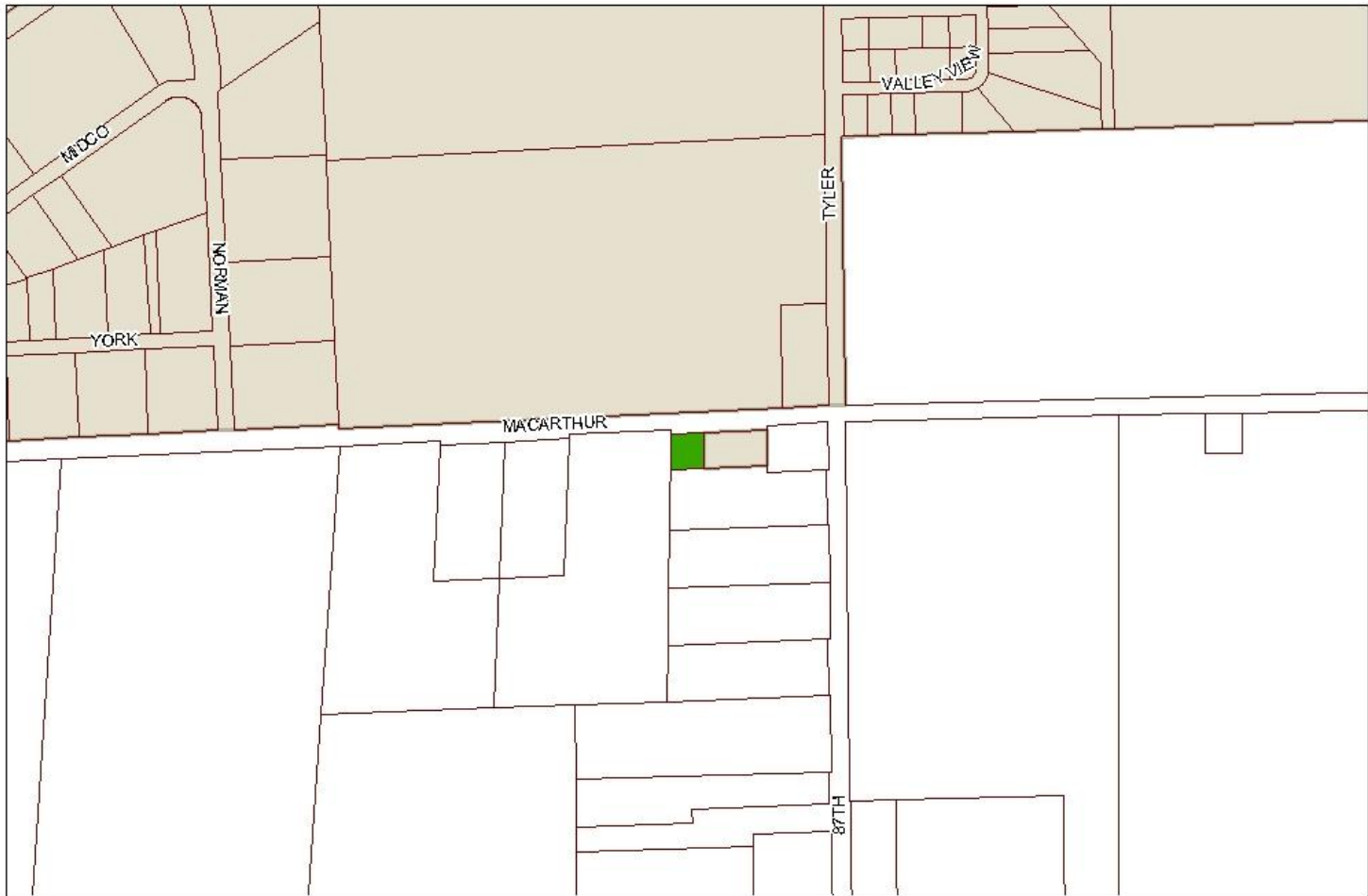


Software: ArcGIS
Map Data Source: City of Wichita, Sedgwick County
Prepared: 2/20/09
It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no intention and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or data displayed.
Note: Public property represented on this map is not intended to be inclusive.

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

General Location: South of MacArthur Road and west of Tyler Road – District IV

Address: 4039 S. Tyler		Reason(s) for Annexation:	
0.62	Area in Acres	X	Request
0	Existing population (est.)		Unilateral
0	Existing dwelling units		Island
0	Existing industrial/commercial units		Other:
Existing zoning:		"SF-20" Single Family	



WICHITA

SEDGWICK COUNTY

A09-08



Software: ArcGIS
Map Data Source: City of Wichita
Sedgwick County
Prepared: 2/20/09

It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no indication and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or data displayed.
Note: Public property represented on this map is not intended to be inclusive.

PUBLISHED IN THE WICHITA EAGLE ON_____

ORDINANCE NO._____

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN
BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE
LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS.
(A09-08)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS:

SECTION 1. The governing body, under the authority of K.S.A. 12-519, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District IV respectively:

A tract of land in the E1/3 of the N1/2 of the NE1/4 of Sec. 17, Twp. 28-S, R-1-W of the 6th P.M., Sedgwick County, Kansas described as commencing at the N.E. Corner of said NE1/4; thence west, along the north line of said NE1/4, 630 feet to the N.W. Corner of the plat of Eliot Addition for a point of beginning; thence continuing west, along the north line of said NE1/4, 154.09 feet to the N.W. Corner of the E1/3 of the N1/2 of said NE1/4; thence south, along the west line of the E1/3 of the N1/2 of said NE1/4, 232.32 feet; thence east, parallel with the north line of said NE1/4, 160.39 feet to the S.W. Corner of the plat of Eliot Addition; thence north, along the west line of the plat of Eliot Addition, 232 feet to the point of beginning, EXCEPT for that part designated as MacArthur Road.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this _____.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 28, 2009

To: Mayor and City Council

Subject: A09-08 Request by Marie C. Eliot to annex lands generally located south of MacArthur Road and west of Tyler Road. (District IV)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Recommendation: Approve the annexation request.

Background: The City has received a request to annex 0.62 acres of land generally located south of MacArthur Road and west of Tyler Road. The annexation area abuts the City of Wichita to the north and east of the property. The annexation area is unplatted; however, the property is part of Eliot Second Addition, which is scheduled for City Council action on the same agenda as the annexation request. Annexation of the property is a condition of the plat.

Analysis:

Land Use and Zoning: The annexation area consists of approximately 0.62 acres zoned “SF-20” Single Family and is undeveloped. On April 14, 2009, the Board of Sedgwick County Commissioners approved a zone change for the property to “GC” General Commercial subject to the condition of platting. The owner plans to use the property to expand a self-storage warehouse facility located immediately east of the property requested for annexation. The adjacent property to the north is zoned “SF-5” Single Family and is part of the approach to Mid-Continent Airport. The adjacent property to the south is zoned “SF-20” Single Family and is developed with a single family residence owned by the applicant. The adjacent property to the east is zoned “GC” General Commercial and is developed with a self-storage warehouse facility owned by the applicant. The adjacent property to the west is zoned “SF-20” Single Family and is used for agriculture.

Public Services: Water and sanitary sewer service are not available to serve the subject property at this time. As a condition of platting, the property owner has been required to submit a petition for future water and sanitary sewer service.

Street System: The subject property has access to MacArthur Road, a two-lane arterial. As a condition of platting, access to MacArthur from the subject property will be from an existing access drive located on the applicant’s other property located immediately east of the subject property.

Public Safety: Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. Fire Station No. 12 at 3443 S. Meridian is the nearest fire station to the site. Upon annexation, police protection will be provided to the area by the Patrol West Bureau of the Wichita Police Department, headquartered at 661 N. Elder.

Parks: Pawnee Prairie Park located approximately two miles north of the subject properties at 2625 S. Tyler is the nearest park. Pawnee Prairie Park is a 625 acre regional park that is designated as a Wichita Wild Habitat area. Facilities include a five-mile bridle trail, an eight-mile nature trail, and a nature center. According to the Parks, Recreation and Open Space Plan, adopted on January 6, 2009, a proposed pathway has been identified along the Cowskin Creek located north and east of the subject property and proposed park target areas have been identified east, west, and south of the subject property.

School District: The annexation property is part of the Unified School District 261 (Haysville School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2030 Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands is not contained in County records, as the property is a portion of another tract and the balance of the tract is not being annexed. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property and the current mill levy. At this time, the property owner is anticipating approximately one self-storage building to be constructed within the next year. The total appraised value of the commercial development after completion is estimated at \$66,000. Assuming the current City levy remains about the same, this would roughly yield a total of \$528 in City annual tax revenues.

Goal Impact: Approving the annexation request would impact Wichita's goal to ensure efficient infrastructure, for annexation of this property would assist the City in satisfying the demand for new infrastructure needed to support growth and development.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, *et seq.*

Recommendations/Actions: Approve the annexation request, place the ordinance on first reading and authorize the necessary signatures.

Attachment: Map Sheet
Ordinance

**City of Wichita
City Council Meeting
July 28, 2009**

TO: Wichita Airport Authority

SUBJECT: Emergency Purchase – Terminal Building Chiller – Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the emergency purchase.

Background: On March 18, 2009, a memo was forwarded to the City Manager requesting that an emergency purchase be approved for a centrifugal chiller motor for the terminal building. Two chillers supply cooling to the main terminal and concourse areas. One of the chillers failed—resulting in a 50% capacity for cooling until the repairs were made. Due to the cooling loads within the terminal, the remaining chiller was required to operate at full capacity once the outside temperature reached approximately 75 degrees. In that the remaining chiller was the same age as the one which failed, with approximately the same number of running hours, Airport staff concluded it was in the best interest of the airport to proceed with the repair as soon as possible, so as to not overload the operating chiller or to inconvenience the public if the temperatures in the terminal building were unacceptable. Even more critical, however, was that if the working chiller failed, the issue would become serious.

Analysis: The Purchasing Policy and Procedure Manual states that documentation for emergency materials or services purchased over \$25,000 must have the City Manager’s written approval. Further, Section 2.64.020 states that public bidding will not be required “in those instances when public exigency will not permit the delay incident to advertising as determined and approved by the City Manager.” Administrative Regulation 2.6 – Finance/Purchasing Expenditure Control, allows for an emergency purchase, but requires City Manager’s written approval and subsequent City Council approval.

Financial Considerations: The original quote received from Building Control Systems in the amount of \$36,350.45 was approved by the City Manager. A separate quote was requested to plan for unforeseen damage or conditions which would prevent the chiller from being rebuilt and operating in a reliable manner. The additional work resulted in an increase of \$5,617.33, for which a change order was approved by City Purchasing on June 25, 2009. Total cost of the project is \$41,967.78, and will be funded from the Airport Department’s operating budget.

Goal Impact: The Airport’s contribution to the economic vitality of Wichita is promoted through maintaining the Airport’s facilities in order to enhance the traveling public’s use of the facility.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the emergency purchase in the amount of \$41,967.78.

Attachments: None.

**City of Wichita
City Council Meeting
July 28, 2009**

TO: Wichita Airport Authority

SUBJECT: Tenant Facility Improvements
1761 Airport Road Roof & HVAC and 2008 Re-roof Project
Wichita Mid-Continent Airport and
Colonel James Jabara Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the budget adjustment and Change Order.

Background: A project to re-roof the facility and replace the HVAC system at 1761 Airport Road was approved on May 20, 2008. A project to re-roof the buildings at 2010 Airport Road on Mid-Continent Airport and 3340 Jabara Road on Colonel James Jabara Airport was approved on August 8, 2008. These projects were included in the 2008-2016 Capital Improvements Program (CIP). All properties are currently under lease.

Due to economies of scale, it was determined that combining these projects into one bid was the most efficient use of funds and lessened construction impact on the tenants. The construction contract was awarded in the amount of \$738,654 to Descon, Inc. on October 28, 2008.

Analysis: During construction it was determined several smoke/fire dampers could be removed from the 1761 Airport Road project and the installation of a pipe through the basement wall was prudent to accommodate a future project. Damage to a portion of the terminal building was discovered after the project started and its repair was consequently added to the project.

During the work on the 3340 Jabara Road roof, a hidden condition was discovered requiring changes to a roof drain.

Financial Considerations: Staff has prepared Change Order No. 1 in the amount of \$18,251 for these changes, a percentage increase of 2.5%. The budget for the 1761 Airport Road project will increase from \$715,000 to \$730,000, an increase of \$15,000, to cover the Mid-Continent Airport changes. The budget for the 3340 Jabara Road project will cover the changes to that building and therefore requires no adjustment. The project costs will be funded with General Obligation Bonds paid for with airport revenue.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through accommodating tenants in allowing improvements to be made which will enhance the usefulness and marketability of WAA-owned facilities.

Legal Considerations: The Law Department has approved the Change Order as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the budget adjustment and authorize the necessary signatures.

Attachments: Change Order No. 1.

CHANGE ORDER

Date: 06/16/2009

No. Change Order #1

OWNER'S Project No. 458-388 458-390 FAA Project No. N/A

Project: HVAC Upgrade and Reroof (Mid-Continent Airport & Colonel James Jabara Airport)

Contractor: Descon Construction Inc.

Contract Date: 10/28/2008

Nature of changes:

1. Add 1 fire-smoke damper / delete 6 fire-smoke dampers per Proposal Request #01.
1761 Airport Road, Mid-Continent Airport \$(850.00)
2. Install pipe sleeves through East basement wall per Proposal Request #02.
1761 Airport Road, Mid-Continent Airport \$1,868.00
3. Additional roof work at Terminal and Concourse Buildings per Proposal Request #04.
14 additional days added to Phase 2 contract time.
Mid-Continent Airport \$12, 927.00
4. Repair work to roof drain and piping at Jabara Airport per Proposal Request #05.
14 additional days added to Phase 2 contract time.
3340 Jabara Road, Colonel James Jabara Airport \$3,556.00
5. Additional costs associated with TSA required badging changes for roof terminal work.
14 additional days added to Phase 2 contract time.
Mid-Continent Airport \$ 750.00
6. 14 additional days added to Phase 2 contract time for weather delays.
\$0.00

Total Add: \$18,251.00

Attachments:

1. Descon summary page of approved added cost to project, Proposal Request #01, Howard + Helmer recommendation letter, WAA approval letter.
2. Descon summary page of approved added cost to project, Proposal Request #02, Howard + Helmer recommendation letter, WAA approval letter.
3. Descon summary page of approved added cost to project, Proposal Request #04, Howard + Helmer recommendation letter, WAA approval letter.
4. Descon summary page of approved added cost to project, Proposal Request #05, Howard + Helmer recommendation letter, WAA approval letter.
5. Descon summary page of approved added cost to project, Descon proposal letter, WAA approval letter.
6. Descon letter requesting 14 additional calendar days due to weather delays including NOAA's National Weather Service Data.

These changes result in the following adjustment of Contract price and Contract time:

Contract price prior to this Change Order	\$	<u>\$738,654.00</u>
Net (increase) (decrease) resulting from this Change Order	\$	<u>\$18,251.00</u>
Current Contract price including this Change Order	\$	<u>\$756,905.00</u>

Contract time prior to this Change Order April 30, 2009 (Phase 2)
(Days or Date)

Net (**increase**) (~~decrease~~) resulting from this Change Order 56 calendar days (Phase 2)
(Days)

Current Contract time including this Change Order June 25, 2009 (Phase 2)
(Days or Date)

The changes are accepted.

Date: 6/30/09


CONTRACTOR
(Descon Inc.)

The changes are approved:

Date: 6/29/09


ENGINEER/ARCHITECT
(Howard + Helmer Architecture)

The changes are accepted:

Date: _____

DIRECTOR OF AIRPORTS
(Victor White)

You are directed to make the changes noted:

Dated: _____

OWNER – WICHITA AIRPORT AUTHORITY
(Carl Brewer)

City of Wichita
City Council Meeting
July 28, 2009

TO: Mayor and City Council

SUBJECT: Change Order: Old Town Drainage Improvement
(District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On September 11, 2007, the City Council approved a construction contract with Wildcat Construction Company to construct a storm water drain to Old Town. A part of the work is the extension of a storm sewer to the area under the elevated rail corridor at 1st Street. It has been determined that the pipe line should be upsized to a larger size to provide more drainage capacity.

Analysis: A change order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is \$10,394 with the total paid by the Storm Water Utility. The original contract amount is \$5,081,022. This change order plus previous change orders represents 4.97% of the original contract amount.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving drainage in Old Town.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.



PUBLIC WORKS-ENGINEERING

June 15, 2009

CHANGE ORDER

To: Wildcat Construction Co., Inc.

Project: Douglas Ave. Drainage Outfall Ph 1;
Wabash SS Repl.; Douglas WM Repl.

Change Order No.: 7

Project No.: 468-84060

Purchase Order No.: 700966

OCA No.: 660798/620477/636183

CHARGE TO OCA No.: 660798

PPN: 864501/667595/777574

Please perform the following extra work at a cost not to exceed \$10,393.50

Storm Water Utility request up-sizing storm water pipe to provide more capacity to the area under the elevated rail corridor at 1st Street. Provide storm water modifications to Line 1A, delete 18' inlet stub and extend cast-in-place storm water structure connection at existing brick arch due to deteriorated connection, as directed by the Engineer.

ADD ITEMS:

Lump Sum Items (660798)	Quantity	Unit Price		
30" RCP Upgrade	67.45 lf	130.00	=	\$8,768.50
SWS MH Modification	3 ea	150.00	=	\$450.00
Brick Arch Connection Ext	1 ls	1695.00	=	\$1695.00

DEDUCT ITEMS:

Lump Sum Items (660798)				
18" RCP	(8.00) lf	65.00		(\$520.00)

CIP Budget Amount: \$7,840,000.00 (660798);

Original Contract Amt.: \$5,081,022.00

Consultant: Baughman

Current CO Amt.: \$10,939.50

Total Exp. & Encum. To Date: \$7,282,653.54 (660798)

Amt. of Previous CO's: \$242,004.01

CO Amount: \$10,393.50

Total of All CO's: \$252,397.51

Unencum. Bal. After CO: \$645,952.96 (660798)

% of Orig. Contract / 25% Max.: 4.97%

Adjusted Contract Amt.: \$5,333,419.51

Recommended By:

Approved:

Greg Baalamn, P.E.
Construction Engineer

Date

Jim Armour, P.E.
City Engineer

Date

Approved:

Approved:

Contractor

Date

Chris Carrier, P.E.
Director of Public Works

Date

Approved as to Form:

By Order of the City Council:

Gary Rebenstorf
Director of Law

Date

Carl Brewer
Mayor

Date

Attest:_____

City Clerk

City of Wichita
City Council Meeting
July 28, 2009

TO: Mayor and City Council

SUBJECT: Change Order: Central/Tyler Intersection Improvement
(District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On July 22, 2008, the City Council approved a construction contract with Cornejo & Sons, Inc. to improve the intersection of Central and Tyler. After the work began, it was determined that a valley gutter at the south end of the project should be reconstructed to improve drainage. Also, additional wheel chair ramps, retaining walls, and pavement repair at various locations were needed.

Analysis: A change order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is \$29,685 with the total paid by City General Obligation bonds. The original contract amount is \$2,463,236. This change order plus a previous change order represents an increase of 4.06% in the original contract amount. This change order can be covered by the existing authorized budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow along an important transportation corridor.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.



PUBLIC WORKS-ENGINEERING

June 19, 2009
CHANGE ORDER

To: Cornjeo & Sons

Project: Central & Tyler Intersection

Change Order No.: 2

Project No.: 472-84655 (87N-0378-01)

Purchase Order No.: 800887

OCA No.: 706974/636206

CHARGE TO OCA No.: 706974 = \$34,185.04
636206 = \$4,500.00

PPN: 208440/778596

Please perform the following extra work at a cost not to exceed \$29,685.04

City of Wichita requests the contractor to repair curb and valley gutters at the south end of the project to improve drainage. Additional wheel chair ramps, retaining walls, manhole, and mill & overlay were constructed at various locations with new pavement markings. Adjust measured quantity bid items based on final measurements.

Budget Amount: \$3,000,000.00 (706974)
\$ 85,600.00 (636206)

Original Contract Amt.: \$2,463,235.96

Consultant: Baughman
Total Exp. & Encum. To Date: \$2,802,454.48 (706974)
\$ 50,971.14 (636206)

Current CO Amt.: \$29,685.04
Amt. of Previous CO's: \$70,283.76
Total of All CO's: \$99,968.80
% of Orig. Contract / 25% Max.: 4.06%

CO Amount: \$29,685.04
Unencumbered Bal. After CO: \$163,360.48 (706974)
\$ 50,971.14 (636206)

Adjusted Contract Amt.: \$2,563,204.76

Recommended By:

Approved:

Greg Baalman, P.E.
Construction Engineer

Date

Jim Armour, P.E.
City Engineer

Date

Approved:

Approved:

Contractor

Date

Chris Carrier, P.E.
Director of Public Works

Date

Approved as to Form:

By Order of the City Council:

Gary Rebenstorf
Director of Law

Date

Carl Brewer
Mayor

Date

Attest: _____
City Clerk

City of Wichita
City Council Meeting
July 28, 2009

TO: Mayor and City Council

SUBJECT: Change Order: Street Paving in Moorings 10th Addition (west of Meridian, south of 53rd Street North) (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On December 16, 2008, the City Council approved a construction contract with Kansas Paving, Inc. for street paving in Moorings 10th Addition. The developer of the addition has requested that a concrete retaining wall be extended to match the retaining wall at a bridge on the entrance street to the addition.

Analysis: A change order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is \$15,816 with the total paid by special assessments. The original contract amount is \$835,919. This change order represents 1.89% of the original contract amount. Funding is available within the existing petition.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing required paving improvements for new development.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.



PUBLIC WORKS-ENGINEERING

May 20, 2009

CHANGE ORDER

To: Conspec, Inc. d/b/a Kansas Paving

Project: Crystal Beach, Portwest TIED
W/Bridge on Westport to serve Moorings 10th
Addition

Change Order No.: 1

Purchase Order No.: 801517

CHARGE TO OCA No.: 766201

Project No.: 472-84642/472/84643

OCA No.: 766200/766201

PPN: 490218/490219

Please perform the following extra work at a cost not to exceed \$15,816.00

Per Developer's request, Concrete Retaining Wall (RCB STA. 10+97.00=St. STA. 11+72.39, 48.5' Rt.) was extended 33 lf on the southeast corner to match wall on the southwest corner of the bridge. Additional wells were needed to dewater work area.

OVERRUN:

Conc. Retaining Wall	33	lf	@	\$352.00	=	\$11,616.00
Excavation	240	cy	@	\$6.25	=	\$1,500.00
Site Clearing & Restoration	1	LS	@	\$2,700.00	=	\$2,700.00
TOTAL COST						= \$15,816.00

CIP Budget Amount: \$752,000.00 (766200);
\$417,000.00 (766201)

Consultant: MKEC
Total Exp. & Encum. To Date: \$351,925.97 (766201)
CO Amount: \$15,816.00
Unencum. Bal. After CO: \$49,258.03

Original Contract Amt.: \$835,918.69

Current CO Amt.: \$15,816.00
Amt. of Previous CO's: \$0.00
Total of All CO's: \$15,816.00
% of Orig. Contract / 25% Max.: 1.89%
Adjusted Contract Amt.: \$851,734.69

Recommended By:

Greg Baalman, P.E. Date
Construction Engineer

Approved:

Contractor Date

Approved as to Form:

Gary Rebenstorf Date
Director of Law

Approved:

Jim Armour, P.E. Date
City Engineer

Approved:

Chris Carrier, P.E. Date
Director of Public Works

By Order of the City Council:

Carl Brewer Date
Mayor

Attest: _____
City Clerk

CITY OF WICHITA
City Council Meeting
July 28, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of 1557 South Hydraulic for the Hydraulic: Harry to Kellogg Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 20, 2007, the City Council approved a project to improve Hydraulic from Kellogg to Harry. Hydraulic is currently two lanes with on-street parking on the west side. Hydraulic will be improved to three lanes with two through lanes and a center two-way left turn lane. Improved traffic signals will be installed at Lincoln and Harry. The storm water sewer system will be improved and five foot wide sidewalks will be installed on both sides of Hydraulic. The project requires a ten foot by ten foot triangle from the property at the southwest corner of Hydraulic and Harry. The property at 1557 South Harry is improved with a retail facility. The acquisition will require the relocation of the business sign and the closure of one drive on Hydraulic. The acquisition does not impact the structure.

Analysis: The 50 square foot tract was valued at \$400 (\$8.00 per square foot) based on the market value of similar properties. The owner agreed to accept the offer. The cost to relocate the business sign will be handled separately as a relocation item.

Financial Considerations: The funding sources for the project are General Obligation Bonds. A budget of \$6,500 is requested. This includes \$400 for the acquisition, \$4,000 to move the sign and \$100 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel addresses efficient infrastructure by allowing the improvement of traffic flow and drainage along a major transportation corridor.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: Tract map, aerial and real estate purchase agreement.

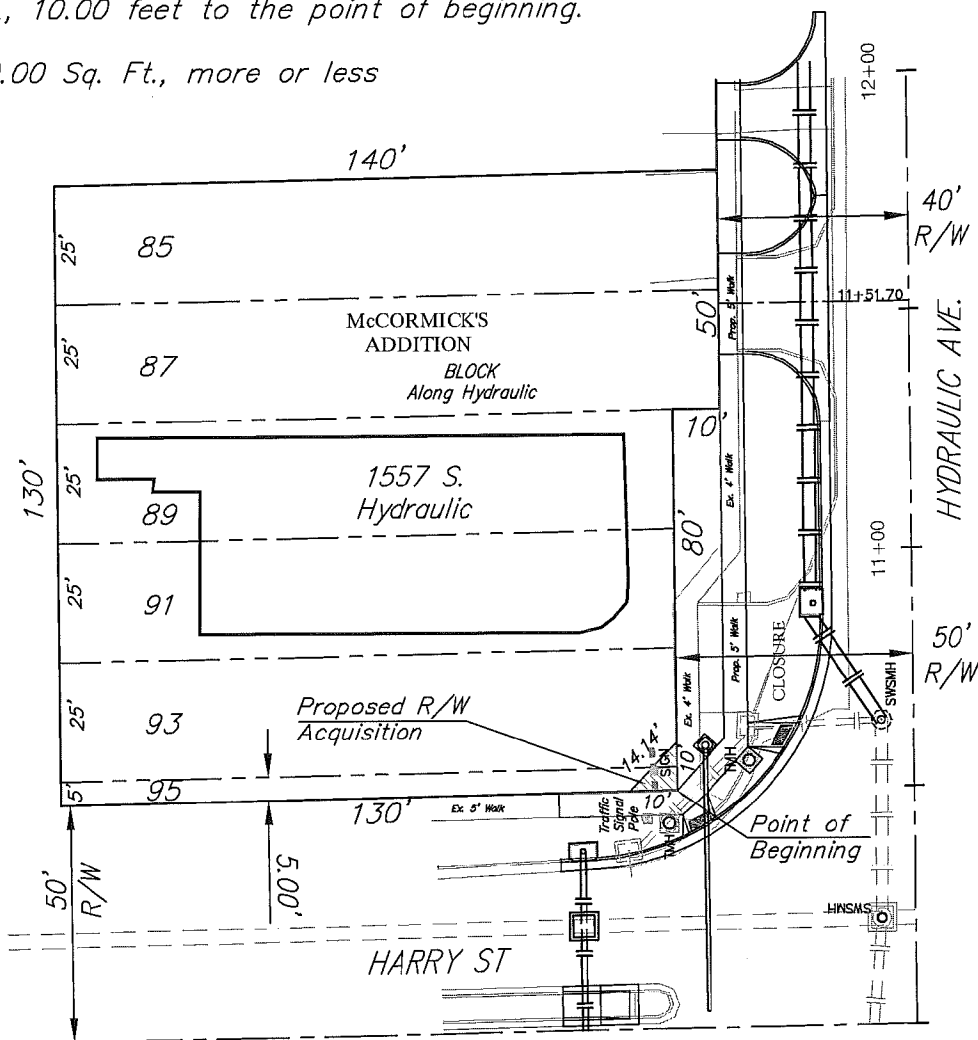
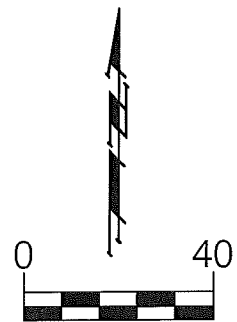
LEGAL DESCRIPTION:

EXHIBIT

A Proposed Street right-of way in Lots 93, 95, along Hydraulic Ave., McCormick's Addition to Wichita, Sedgwick County, Kansas, described as follows:

That part of Lots 93 and 95, on Hydraulic Ave., McCormick Addition to Wichita, Sedgwick County, Kansas described as beginning at a point 10.00 feet west of the east line of said Lot 95 as measured parallel with the south line of said Lot 95 and 20.00 feet north of the south line of said Lot 95 as measured parallel with the east line of said Lot 95, said point also being on the north line of Harry St. and on the west line of said Hydraulic Ave.; thence westerly along the north line of said Harry St., 10.00 feet; thence northeasterly, 14.14 feet, more or less, to a point on the west line of said Hydraulic Ave., said point being 10.00 feet north of the point of beginning; thence southerly along the west line of said Hydraulic Ave., 10.00 feet to the point of beginning.

Containing 50.00 Sq. Ft., more or less



Owner:
Cooper Inc.
2142 Bella Vista St.
Wichita, Kansas
67203-1514

Project Number 07-10-E968

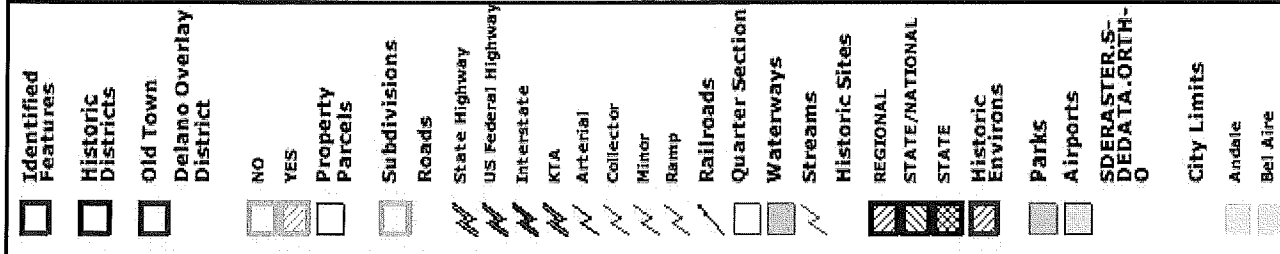
E:eng/Hydraulic Kellogg to Harry Pave\Exhibits\1557 S. Hydraulic



Baughman

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

S-7-09



Printed: 4/21/2009 2:02:55 PM
Powered By GeoSmart.n



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken, or not taken by the reader, in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

PROJECT: Hydraulic – Kellogg to Harry

DATE: June 10, 2009

COUNTY: Sedgwick

TRACT NO.: 3

CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE **OF REAL ESTATE BY WARRANTY DEED**

THIS AGREEMENT made and entered into this ____ day of 2009 by and between:

Cooper, Inc.
2142 Bella Vista
Wichita, Kansas 67203

landowner(s), and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A right of way acquisition described as follows:

That part of Lots 93 and 95, on Hydraulic Avenue, McCormick Addition to Wichita, Sedgwick County, Kansas described as beginning at a point 10.00 feet west of the east line of said Lot 95 as measured parallel with the south line of said Lot 95 and 20.00 feet north of the south line of said Lot 95 as measured parallel with the east line of said Lot 95, said point also being on the north line of Harry Street and on the west line of Hydraulic Avenue; thence westerly along the north line of said Harry Street; 10.00 feet; thence northeasterly, 14.14 feet, more or less, to a point on the west line of said Hydraulic Avenue, said point being 10.00 feet north of the point of beginning; thence southerly along the west line of said Hydraulic Avenue 10.00 feet to the point of beginning.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within ten days after the warranty deed conveying said property free of encumbrance has

been delivered.

Approximately 50 (Sq. Ft.) for right-of-way	\$400.00
Cost to Cure:	\$ 0.00
Damages including but not limited to:	\$ 0.00
TOTAL	\$400.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

City of Wichita
County of Sedgwick
State of Kansas

By _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Landowner:
Cooper, Inc.

Doris J. Klose

By _____
Doris J. Klose, President

Approved as to form:

Gary E. Rebenstorf, Director of Law

MEMORANDA

Exact and full name of owner, as it appears of record:

Cooper, Inc.

REMARKS:

RECOMMENDED BY:

CITY OF WICHITA
City Council Meeting
July 28, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of 11319 East Harry for the Greenwich: Harry to Kellogg Improvement Project (District II)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: Greenwich will be widened from two lanes to five lanes. There will be four lanes of traffic and a center two-way turn lane. Landscaped medians will also be constructed throughout the corridor. The intersection of Harry and Greenwich will be reconstructed with left turn lanes at all four approaches of the intersection. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the east and west side of Greenwich. The property at 11319 is improved with a single-family residence. The improvements are removed from the proposed acquisition. It is necessary to obtain a ten-foot wide strip of land along Harry to accommodate the new bike path and corridor improvements. A five-foot temporary construction easement is also required. The right-of-way consists of 1,170 square feet and the temporary easement consists of 585 square feet.

Analysis: The owner rejected an estimated market offer of \$1,535, or \$1.25 per square foot for road right-of-way and \$0.12 per square foot for the temporary easement. The property owner agreed to accept \$2,275, or \$1.88 per square foot for the right-of-way and \$0.12 per square foot for the temporary construction easement. These amounts are reasonable and prudent.

Financial Considerations: The funding sources for the project are General Obligation Bonds and Federal Grants. A budget of \$3,000 is requested. This includes \$2,275 for the acquisition and \$725 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure of roads and storm water drainage through a developed part of the City.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: Tract map, aerial and real estate purchase agreement.

**City of Wichita
City Council Meeting
July 28, 2009**

TO: Mayor and City Council

SUBJECT: Douglas Street Lighting West of Oliver (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendations: Adopt the resolution.

Background: On April 22, 2008, the City Council approved a petition to install ornamental street lights along Douglas, between Dellrose and Glendale. The legal description for the improvement district did not include a block reference that is contained in County property records. A resolution has been prepared to correct the error.

Analysis: The project expanded the area of ornament street lights that had been installed with the improvement to the intersection of Douglas and Oliver.

Financial Considerations: The approved project budget of \$150,000 is unaffected.

Goal Impact: This project addressed the Efficient Infrastructure goal by improving Douglas Street aesthetics.

Legal Considerations: State Statutes provide the City Council authority to correct the error by resolution.

Recommendation/Actions: It is recommended that the City Council adopt the resolution and authorize the necessary signatures.

Attachments: Resolution.

First Published in the Wichita Eagle on July 31, 2009

RESOLUTION NO. 09-253

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING INSTALLING PERIOD STREET LIGHTING ALONG DOUGLAS FROM DELLROSE TO GLENDALE (472-84715) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING INSTALLING PERIOD STREET LIGHTING ALONG DOUGLAS FROM DELLROSE TO GLENDALE (472-84715) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 08-213 adopted on April 22, 2008 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize installing period street lighting along Douglas from Dellrose to Glendale (472-84715).

Said lighting shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to One Hundred Fifty Thousand Dollars (\$150,000) exclusive of the cost of interest on borrowed money, with \$50,000 payable by the improvement district and the balance paid by General Obligation Bonds. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after March 31, 2008 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

WASSON MANOR ADDITION

Lots 1 through 3, inclusive
The S 65' of Lots 4 and 5

LINCOLN HEIGHTS ADDITION

Block 3

EAST BOULEVARD ADDITION

Lot 19 and ½ vacated alley on east, Block 8
Lot 22 and ½ vacated alley on west, Block 8

EAST DOUGLAS ADDITION

Lots 12 through 22 inclusive, Douglas Ave

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a square foot basis.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of July, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

Agenda Item No. XII-7

**City of Wichita
City Council Meeting**

July 28, 2009

TO: Mayor and City Council Members

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
(Districts I and III)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendations: Adopt the attached resolutions to schedule required City Council public hearings to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes.

Background: On July 13, 2009, the Board of Code Standards and Appeals conducted hearings on the three (3) properties listed below. The buildings on these properties are considered dangerous and unsafe structures per State Statutes and local ordinances, and are being presented in order to schedule condemnation hearings before the City Council. The Board of Code Standards and Appeals has recommended that the City Council proceed with condemnation, demolition and removal of the dangerous buildings on these properties.

Analysis: Minimum Housing Code violation notices have been issued on these structures; however, compliance has not been achieved. Pre-condemnation and formal condemnation letters have also been issued, and the time granted for repair or removal has expired. No actions have been taken by the property owners and/or other interested parties to complete required building repairs or to remove the dangerous buildings.

<u>Property Address</u>	<u>Council District</u>
a. 2048 N. Minneapolis	I
b. 1608 N. Volusia	I
c. 1040 S. Vassar	III

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional \$500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods: Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The structures have defects that under Ordinance No. 28-251 of the Code of the City of Wichita, shall cause them to be deemed as dangerous and unsafe buildings for condemnation consideration, as required by State Statutes.

Recommendations/Actions: Adopt the attached resolutions to schedule a public hearing before the City Council on September 15, 2009 at 9:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

Attachments: Letters to Council, summaries, and resolutions.

PUBLISHED IN THE WICHITA EAGLE ON JULY 31 & AUGUST 7, 2009

RESOLUTION NO. 09-254

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: LOT 58 AND 60, ON MINNEAPOLIS, FORMERLY MINNIE AVENUE, PARKVIEW ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS KNOWN AS 2048 N. MINNEAPOLIS MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the 28th day of July 2009, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.

That a hearing will be held on the 15th day of September 2009, before the governing body of the city at 9:30 A.M., or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOT 58 AND 60, ON MINNEAPOLIS, FORMERLY MINNIE AVENUE, PARKVIEW ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS, known as: 2048 N. MINNEAPOLIS, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one story frame dwelling about 24 x 32 feet in size. Vacant for at least 2 years, this structure has cracked asbestos siding shingles, with missing shingles; composition roof, with missing shingles; deteriorating rear porch, with cracked concrete; and the soffit, fascia and wood trim are deteriorated.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this 28th day of July 2009.

Carl Brewer, Mayor

(SEAL)

ATTEST: _____
Karen Sublett, City Clerk

PUBLISHED IN THE WICHITA EAGLE ON JULY 31 & AUGUST 7, 2009

RESOLUTION NO. 09-255

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: LOTS 6 AND 8, VOLUTSIA AVENUE, WOODRIDGE PLACE ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS KNOWN AS 1608 N. VOLUTSIA MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the 28th day of July 2009, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.

That a hearing will be held on the 15th day of September 2009, before the governing body of the city at 9:30 A.M., or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOTS 6 AND 8, VOLUTSIA AVENUE, WOODRIDGE PLACE ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS, known as: 1608 N. VOLUTSIA, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one story frame dwelling about 38 x 23 feet in size. Vacant and open, this structure has missing and rotted wood siding; deteriorated composition roof, with missing shingles; sinking concrete rear porch slab; and rotted wood trim and framing members.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this 28th day of July 2009.

Carl Brewer, Mayor

(SEAL)

ATTEST: _____
Karen Sublett, City Clerk

PUBLISHED IN THE WICHITA EAGLE ON JULY 31 & AUGUST 7, 2009

RESOLUTION NO. 09-256

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: THE NORTH 81 FEET OF THE WEST 135 FEET OF ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 27 SOUTH, RANGE 1 EAST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 131.6 FEET NORTH OF THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH A DISTANCE OF 131.6 FEET; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 331 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 131.6 FEET; THENCE EAST, A DISTANCE OF 331 FEET TO THE POINT OF BEGINNING KNOWN AS 1040 S. VASSAR MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the 28th day of July 2009, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.

That a hearing will be held on the 15th day of September 2009, before the governing body of the city at 9:30 A.M., or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at THE NORTH 81 FEET OF THE WEST 135 FEET OF ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 27 SOUTH, RANGE 1 EAST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 131.6 FEET NORTH OF THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH A DISTANCE OF 131.6 FEET; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 331 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 131.6 FEET; THENCE EAST, A DISTANCE OF 331 FEET TO THE POINT OF BEGINNING, known as: 1040 S. VASSAR, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one-story frame dwelling about 53 x 25 feet in size. Vacant for at least 6 years, this structure has a cracking concrete foundation; cracked and missing asbestos siding; badly worn composition roof; deteriorating enclosed front porch; and the 4 x 8 foot metal storage shed is dilapidated.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this 28th day of July 2009.

Carl Brewer, Mayor

(SEAL)

ATTEST: _____
Karen Sublett, City Clerk

GROUP # 2

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **2048 N. MINNEAPOLIS** and legally described as: **LOT 58 AND 60, ON MINNEAPOLIS, FORMERLY MINNIE AVENUE, PARKVIEW ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **September 15, 2009** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

[illegible]

BE IT REMEMBERED, That on this _____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

Notary Public

My Appointment Expires:



TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one story frame dwelling about 24 x 32 feet in size. Vacant for at least 2 years, this structure has cracked asbestos siding shingles, with missing shingles; composition roof, with missing shingles; deteriorating rear porch, with cracked concrete; and the soffit, fascia and wood trim are deteriorated.

(b) Street Address: 2048 N. MINNEAPOLIS

(c) Owners:
Harold L. Lugrand & Shirley Y. Lugrand
504 Angelina Drive
Arlington, TX 76018

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record: None

(g) Mortgage Holder(s): None

(h) Interested Parties: None

DATE: July 13, 2009

CDM SUMMARY

COUNCIL DISTRICT # 1

ADDRESS: 2048 N. Minneapolis

LEGAL DESCRIPTION: LOT 58 AND 60, ON MINNEAPOLIS, FORMERLY MINNIE AVENUE, PARKVIEW ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 24 x 32 feet in size. Vacant for at least 2 years, this structure has cracked asbestos siding shingles, with missing shingles; composition roof, with missing shingles; deteriorating rear porch, with cracked concrete; and the soffit, fascia and wood trim are deteriorated.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

- A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**
- B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**
- C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

Superintendent of Central Inspection
Enforcing Officer

Date

OCA: 230200

PUBLISHED IN THE WICHITA EAGLE ON
RESOLUTION NO. _____

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOT 58 AND 60, ON MINNEAPOLIS, FORMERLY MINNIE AVENUE, PARKVIEW ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS KNOWN AS 2048 N. MINNEAPOLIS** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **28th day of July 2009**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.

That a hearing will be held on the **15th day of September 2009**, before the governing body of the city at **9:30 A.M.**, or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOT 58 AND 60, ON MINNEAPOLIS, FORMERLY MINNIE AVENUE, PARKVIEW ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS, known as: 2048 N. MINNEAPOLIS, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one story frame dwelling about 24 x 32 feet in size. Vacant for at least 2 years, this structure has cracked asbestos siding shingles, with missing shingles; composition roof, with missing shingles; deteriorating rear porch, with cracked concrete; and the soffit, fascia and wood trim are deteriorated.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **28th day of July 2009**.

Carl Brewer, Mayor

(SEAL)

ATTEST: _____
Karen Sublett, City Clerk

GROUP # 3

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **1608 N. VOLUTSIA** and legally described as: **LOTS 6 AND 8, VOLUTSIA AVENUE, WOODRIDGE PLACE ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **September 15, 2009** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

[illegible]

BE IT REMEMBERED, That on this _____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

Notary Public

My Appointment Expires:



TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one story frame dwelling about 38 x 23 feet in size. Vacant and open, this structure has missing and rotted wood siding; deteriorated composition roof, with missing shingles; sinking concrete rear porch slab; and rotted wood trim and framing members.

(b) Street Address: 1608 N. VOLUTSIA

(d) Owners:
Cleophus Williams & Everlee Williams (both deceased)
POST ON PROPERTY

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N. Main
Wichita, KS 67203

Chris McElgunn, Attorney
301 N. Main #1600
Wichita, KS 67202

City of Wichita
Housing & Economic Development
332 Riverview
Wichita, KS 67203

(i) Mortgage Holder(s):
City of Wichita
Housing & Economic Development
332 Riverview
Wichita, KS 67203

City of Wichita
Neighborhood Improvement Services
332 Riverview
Wichita, KS 67203

(j) Interested Parties:
Timothy Timmins
224 S. Green
Wichita, KS 67211

Clyde R. Williams Sr.
1544 N. Minnesota
Wichita, KS 67214

DATE: July 13, 2009

CDM SUMMARY

COUNCIL DISTRICT # 1

ADDRESS: 1608 N. VOLUTSIA

LEGAL DESCRIPTION: LOTS 6 AND 8, VOLUTSIA AVENUE, WOODRIDGE PLACE ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 38 x 23 feet in size. Vacant and open, this structure has missing and rotted wood siding; deteriorated composition roof, with missing shingles; sinking concrete rear porch slab; and rotted wood trim and framing members.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

- A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**
- B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**
- C. Those open to unauthorized persons or those permitted to be attractive to loiterers, vagrants, or children.**
- D. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

Superintendent of Central Inspection
Enforcing Officer

Date

OCA: 230200

PUBLISHED IN THE WICHITA EAGLE ON
RESOLUTION NO. _____

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOTS 6 AND 8, VOLUTSIA AVENUE, WOODRIDGE PLACE ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS** KNOWN AS **1608 N. VOLUTSIA** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **28th day of July 2009**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.

That a hearing will be held on the **15th day of September 2009**, before the governing body of the city at **9:30 A.M.**, or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at **LOTS 6 AND 8, VOLUTSIA AVENUE, WOODRIDGE PLACE ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS**, known as: **1608 N. VOLUTSIA**, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one story frame dwelling about 38 x 23 feet in size. Vacant and open, this structure has missing and rotted wood siding; deteriorated composition roof, with missing shingles; sinking concrete rear porch slab; and rotted wood trim and framing members.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **28th day of July 2009**.

Carl Brewer, Mayor

(SEAL)

ATTEST: _____
Karen Sublett, City Clerk

GROUP # 3

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **1040 S. VASSAR** and legally described as: **THE NORTH 81 FEET OF THE WEST 135 FEET OF ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 27 SOUTH, RANGE 1 EAST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 131.6 FEET NORTH OF THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH A DISTANCE OF 131.6 FEET; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 331 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 131.6 FEET; THENCE EAST, A DISTANCE OF 331 FEET TO THE POINT OF BEGINNING**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **September 15, 2009** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

[illegible]

BE IT REMEMBERED, That on this _____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

Notary Public

My Appointment Expires:



TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one-story frame dwelling about 53 x 25 feet in size. Vacant for at least 6 years, this structure has a cracking concrete foundation; cracked and missing asbestos siding; badly worn composition roof; deteriorating enclosed front porch; and the 4 x 8 foot metal storage shed is dilapidated.

(b) Street Address: 1040 S. VASSAR

(c) Owners:
Devendra R. Kadakia & Dipika D. Kadakia
25272 Cinnamon Road
Lake Forrest, CA 92630

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N. Main
Wichita, KS 67203

Chris McElgunn, Attorney
301 N. Main #1600
Wichita, KS 67202

(k) Mortgage Holder(s): None

(l) Interested Parties: None

DATE: July 13, 2009

CDM SUMMARY

COUNCIL DISTRICT # 3

ADDRESS: 1040 S. VASSAR

LEGAL DESCRIPTION: THE NORTH 81 FEET OF THE WEST 135 FEET OF ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 27 SOUTH, RANGE 1 EAST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 131.6 FEET NORTH OF THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH A DISTANCE OF 131.6 FEET; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 331 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 131.6 FEET; THENCE EAST, A DISTANCE OF 331 FEET TO THE POINT OF BEGINNING.

DESCRIPTION OF STRUCTURE: A one-story frame dwelling about 53 x 25 feet in size. Vacant for at least 6 years, this structure has a cracking concrete foundation; cracked and missing asbestos siding; badly worn composition roof; deteriorating enclosed front porch; and the 4 x 8 foot metal storage shed is dilapidated.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

- A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**
- B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**
- C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

Superintendent of Central Inspection
Enforcing Officer

Date

PUBLISHED IN THE WICHITA EAGLE ON
RESOLUTION NO. _____

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **THE NORTH 81 FEET OF THE WEST 135 FEET OF ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 27 SOUTH, RANGE 1 EAST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 131.6 FEET NORTH OF THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH A DISTANCE OF 131.6 FEET; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 331 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 131.6 FEET; THENCE EAST, A DISTANCE OF 331 FEET TO THE POINT OF BEGINNING KNOWN AS 1040 S. VASSAR** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **28th day of July 2009**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.

That a hearing will be held on the **15th day of September 2009**, before the governing body of the city at **9:30 A.M.**, or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at **THE NORTH 81 FEET OF THE WEST 135 FEET OF ALL THAT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 27 SOUTH, RANGE 1 EAST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 131.6 FEET NORTH OF THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE NORTH A DISTANCE OF 131.6 FEET; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 331 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 131.6 FEET; THENCE EAST, A DISTANCE OF 331 FEET TO THE POINT OF BEGINNING, known as: 1040 S. VASSAR**, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one-story frame dwelling about 53 x 25 feet in size. Vacant for at least 6 years, this structure has a cracking concrete foundation; cracked and missing asbestos siding; badly worn composition roof; deteriorating enclosed front porch; and the 4 x 8 foot metal storage shed is dilapidated.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **28th day of July 2009**.

Carl Brewer, Mayor

(SEAL)

ATTEST: _____
Karen Sublett, City Clerk

**City of Wichita
City Council Meeting
July 28, 2009**

TO: Mayor and City Council

SUBJECT: Aquifer Storage and Recovery Diversion Well Investigation Project

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve the Agreement for Professional Services with CH2M Hill for the Diversion Well Investigation Project for future phases of the Aquifer Storage and Recovery Project.

Background: On July 10, 2007, City Council approved and instructed Staff to proceed with the projects necessary for Phase II of the Equus Beds Aquifer Storage and Recovery Project (ASR). Phase II will consist of a 30 million gallon-per-day (MGD) Water Treatment Plant and Surface Water Intake Structure, as well as the pipelines, recharge and recovery wells, overhead power lines and a SCADA system that will provide much of the backbone for future phases.

Analysis: Diversion wells are constructed adjacent to rivers and designed to withdraw water from the river through the river bank rather than an adjacent aquifer. The City has diversion wells in operation which include three (3) ASR Phase I diversion wells, four (4) Bentley Wellfield Wells and the Sims Wells in the local wellfield.

The initial ASR design concept relied heavily on diversion wells as a source of water for recharge, due to their wide use in other parts of the country and their low treatment costs. Burns & McDonnell Engineering conducted studies and found that the soils along the Little Arkansas River are as diverse as those in the wellfield, thus diversion wells are not going to provide as much water as was initially anticipated. With this realization, the ASR design was changed to a larger percentage of water coming from surface sources, and surface sources require a much greater amount of treatment. The current design still depends on approximately 30 MGD of diversion well water to meet the 100 MGD plan. CH2M Hill will perform a geophysical survey of the area to help determine the best locations to test and eventually construct diversion wells for future phases. Test wells will be constructed in these sites so the appropriate diversion well configuration can be proposed for each site.

The Purchasing Manager issued a Request for Qualifications for professional services for the Diversion Well Investigation Project. The following firms submitted proposals: CH2M Hill, Mid-Kansas Engineering Consultants and Quad State Services Incorporated. All three firms were interviewed by the Staff Screening and Selection Committee, and CH2M Hill was selected to proceed with the project.

Financial Considerations: The estimated cost for the study and associated field work is \$770,000. Funding is available for this project in CIP W-549, Water Supply Plan, Phases II, III and IV.

Goal Impact: The project will help ensure efficient infrastructure by providing for the development of future water supplies.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council: 1) approve the Agreement for Professional Services; 2) approve the expenditure; and 3) authorize the necessary signatures

Attachments: Agreement for Professional Services with CH2M Hill, Inc.

AGREEMENT
for
PROFESSIONAL SERVICES

PROFESSIONAL SERVICES AGREEMENT
CITY OF WICHITA
ASR PROGRAM – DIVERSION WELL INVESTIGATION/PROJECT

_____, 2009

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Recitals	3
Section I - Preliminary Matters	3
Section II - Authority	4
Section III - Basic Services and Responsibilities	4
Section IV - Subconsultants	8
Section V - Schedule	8
Section VI - Compensation	9
Section VII - Examination of Records	10
Section VIII - Assignments/Parties to Agreement	11
Section IX - Ownership of Documents	12
Section X - Taxes and Licenses	13
Section XI - The City's Responsibilities	13
Section XII - Laws and Ordinances	13
Section XIII - Status of Consultant	14
Section XIV - Termination of Agreement	14
Section XV - Insurance Requirements	14
Section XVI - Indemnification	16
Section XVII - Consequential Damages	17
Section XVIII- Force Majeure	17
Section XIV - Miscellaneous	17
 Attachment 1: Scope of Work	
Attachment 2: Milestone Schedule	
Attachment 3: Compensation	
Attachment 4: List of Diversion Well Investigation/Project Team Members and Key Personnel	
Attachment 5: City's Non-Discrimination and Equal Employment/Affirmative Action Program	

AGREEMENT

THIS AGREEMENT, with an effective date of the ____ day of _____, 2009, is made and entered into between the CITY OF WICHITA, KANSAS, a municipal corporation, acting by and through the Wichita Water Utilities (hereinafter called the "City"), and CH2MHILL, INC. a Corporation with a principal place of business at 9193 S. Jamaica St., Englewood, Colorado 80112, (hereinafter called the "Consultant"). (City and Consultant may be collectively referred to herein as "Parties", or individually as "Party".)

Recitals

WHEREAS, the City has developed an Integrated Local Water Supply (ILWS) Plan to meet the City's water supply requirements through the year 2050. This Plan consists of a portfolio of projects and components to be constructed in phases over a 10-year period that must be coordinated in order to meet the Plan's water supply goals.

WHEREAS, the City desires to obtain a Consultant to perform a Diversion Well Investigation/Project to assist the City in planning for future phases of the ASR Program.

WHEREAS, Consultant represents that its members include duly-licensed engineer(s) and architect(s) of the State of Kansas, as applicable, and that it has the present capacity, is experienced and qualified to perform professional services for the City in connection with the planning, design, and installation of Diversion Wells used for ASR Projects as specified in this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and obligations set forth herein, the parties mutually agree as follows:

Section I - Preliminary Matters

- A. Consultant's professional services shall consist of a Scope of Work, **Attachment 1**, attached hereto and incorporated into this Agreement, that details how the Consultant would proceed with the Diversion Well Investigation/Project, the Proposal provided by Consultant as part of its bid and any other services included in this Agreement, including normal architectural, engineering and professional design services, unless superseded by Supplemental Agreement pursuant to **Section VI.C.** of this Agreement. Other exhibits or attachments may be attached to and made a part of this Agreement, some of which may be in conflict with other attachments, exhibits or portions of this Agreement. In the event of any conflict in any of these attachments, exhibits or portions of this Agreement, the intent of the parties is to resolve such conflict in favor of the provision which provides for the greatest scope of services to the City. The greater service shall be included in the professional services provided, without additional compensation.
- B. If the Parties to this Agreement have previously entered into a Professional Services Agreement for professional services for any work related to the Program, then notwithstanding any provisions in that agreement to the contrary, all work performed by Consultant for the Diversion Well

Investigation/Project under this Agreement shall be performed in accordance with the standards, terms, conditions and requirements of this Agreement.

- C. In performing professional services pursuant to this Agreement, Consultant acknowledges that time is of the essence for Program delivery. All services to be performed under this Agreement shall be commenced immediately upon execution of this Agreement by the parties hereto and approval by the City, as required by applicable law, in accordance with the Milestone Schedule set forth in *Attachment 2*, attached hereto and incorporated into this Agreement.
- D. The total compensation to be paid Consultant under this Agreement is stated in **Section VI** of this Agreement, which amount is intended to cover the entire cost of the professional services contemplated by this Agreement. The Consultant agrees to cooperate fully with the City during the Diversion Well Investigation/Project to keep compensation within this limit. The City shall pay Consultant in accordance with the terms of this Agreement as reflected in the Fee Schedule set forth in *Attachment 3*, attached hereto and incorporated into this Agreement.

Section II - Authority

- A. R.W. Beck, Inc. ("Project Manager") is the City's Project Manager for the ASR Program. The Project Manager is responsible for authorizing and approving all work performed under this Agreement. All work to be performed by Consultant shall be authorized in writing by the Project Manager as provided by this Agreement. All communications related to the Diversion Well Investigation/Project shall be with the Project Manager and, in his absence, a person to be designated by him.
- B. Debbie Whaley ("Consultant Representative") is Consultant's representative for the Diversion Well Investigation/Project. Consultant Representative shall have sufficient authority to represent and bind Consultant in those instances when such authority is necessary to carry out Consultant's responsibilities and obligations under the terms of this Agreement.

Section III - Basic Services and Responsibilities

- A. Consultant agrees to perform all of the professional services set forth below and described in *Attachment 1* and/or the proposal provided by Consultant as part of its bid.
- B. Consultant hereby represents to the City that Consultant is financially solvent and possesses sufficient experience, licenses (including required state licenses as applicable), authority, personnel and working capital to complete the services required hereunder.
- C. Consultant hereby represents to the City that Consultant has visited the sites for the Diversion Well Investigation/Project and has familiarized itself with the conditions under which the required services are to be provided; that it has properly investigated and considered all conditions and obstacles in their proposal submitted which may affect its services; and that Consultant will correlate its observations of the site conditions and all of the provisions of this Agreement and of any related construction documents for which Consultant has responsibility. Accordingly, the

parties agree that Consultant will not be granted any additional compensation based upon the lack of information or its effects on the cost of work.

- D. The accuracy of soils, foundation, groundwater, and other subsurface investigations are not guaranteed by the City and Consultant is responsible for verifying same. Consultant shall make all necessary investigations in order to inform itself thoroughly as to the character and magnitude of all work involved in the performance of services hereunder. No plea of ignorance of conditions that exist or that may hereafter exist, or any of the difficulties that will be encountered in the performance of services hereunder, as a result of failure to make necessary examinations and investigations, will be accepted as sufficient excuse for failure or omission on the part of Consultant to fulfill in every detail all the requirements of the Agreement, or will be accepted as a basis for any claim whatsoever for extra compensation or an extension of time.
- E. The professional services provided under this Agreement for the Diversion Well Investigation/Project shall be of a high quality commensurate with that provided by specialized design professionals for projects of similar size, complexity, and difficulty, and shall be adequate and sufficient. All reports, drawings and specifications, as applicable, for the Diversion Well Investigation/Project, when submitted by Consultant to the City, must represent a thorough study and competent solution for the Diversion Well Investigation/Project and shall reflect appropriate and necessary architectural and engineering services applicable. Consultant shall be responsible for ensuring the professional quality, technical accuracy, timely completion and the coordination of all designs, plans, reports, specifications, drawings, schedules, cost estimates and other services rendered by Consultant. Accordingly, the City shall require reimbursement from the Consultant for the value of change orders on construction contracts which use Consultant's plans, specifications and other work due to design errors, plus fifteen percent (15%) of the value of change orders due to design omissions, when the sum of these two figures exceeds two percent (2%) of the original construction contract price. The following formula will apply: (cost of design error change orders) plus (cost of design omission change orders times 0.15) minus (original contract amount X 0.02) equals (required reimbursement by Consultant). This formula covers all necessary change orders during construction, and additionally applies to any necessary modifications that are discovered up to one year after the date of the notice of completion, or up to one year after the date of beneficial occupancy, whichever is earlier. The City's right to require reimbursement is cumulative and does not foreclose or otherwise prevent the City from recovering direct or incidental damages caused by Consultant's failure to perform as stated in this paragraph. The City reserves to itself the right, in its discretion, to make final determinations concerning the responsibility for design errors and omissions.
- F. Consultant represents and warrants to the City that its and all of its subconsultant's services shall be performed in a skillful and competent manner, exercising due and reasonable professional care, and shall comply with the recognized standards of a nationally recognized consulting firm and the standards and practices in this Agreement. The Consultant shall be responsible to the City for all costs and damages resulting from (i) defects in design, (ii) non-workability of design details, (iii) failure to comply with the terms of this Agreement, and (iv) negligent acts, errors or omissions. Consultant and its consultants, subcontractors, agents, employees and officers shall promptly upon notice or discovery, make necessary revisions or corrections of errors, ambiguities, or omissions in the drawings and specifications without additional compensation.

- G. The City shall have the right to disapprove any portion of Consultant's work including, but not limited to, work associated with the design and construction documents, pre-bid and bidding phases, and any other design work or documents, which does not comply with the requirements of this Agreement. In the event that Consultant's work or a portion thereof is not approved by the City, Consultant shall proceed, when requested by the City, with revisions to the design work or documents prepared for that work and meet all applicable requirements of this Agreement. If said additional work complies with the requirements of this Agreement, the City will provide prompt written approval. Correction or completion of work which does not comply with the requirements of this Agreement shall be made without adjustments to the compensation for Consultant's services provided for hereunder unless the revisions are made to work previously approved for previous tasks, in which case, Consultant's compensation shall be adjusted. It is the intent of the parties that Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other work, without additional cost to the City. The acceptance of Consultant's services by the City shall not relieve Consultant from the obligation to correct subsequently discovered defects, inaccuracies or incompleteness resulting from Consultant's negligent acts, errors or omissions.
- H. Consultant shall obtain written authorization from the City before proceeding with each major task for the Diversion Well Investigation/Project.
- I. Consultant shall consult with the City as necessary on all matters connected with carrying out and performing the services required under this Agreement.
- J. Consultant agrees to conduct the Diversion Well Investigation/Project within the general intent of the program and established budget. Should the Consultant determine that the Diversion Well Investigation/Project cannot be conducted within the established budget, Consultant shall immediately notify the City, in writing, so that the scope and/or budget can be reviewed and modified as necessary, including any changes in Consultant's scope, compensation and schedule.
- K. Consultant agrees to conform to and be bound by written standards, criteria, budgetary considerations and policies previously furnished by the City.
- L. All drawings and specifications shall be prepared so that, when constructed in accordance with such drawings and specifications, complies with all applicable laws, statutes, codes, ordinances, executive orders, and rules and regulations of the City, County, the State of Kansas, and the United States Government in effect when the construction documents are finally accepted by the City. Consultant represents to City that the construction documents and any other documents prepared by or through Consultant under the terms and conditions of this Agreement shall meet the applicable standard of care and be prepared in accordance with the existing applicable laws, statutes, codes, ordinances, rules and regulations, including without limitation, those dealing with land use or water rights, use, zoning, building, fire, safety and environmental laws, codes and ordinances of the city, county, state and/or federal agencies or any other governmental or quasi-governmental entity having jurisdiction in effect at the time that the work is performed ("Code Requirements"); subject only to (i) all approved variances therefrom, and (ii) written agency

interpretations thereof when based upon inquiry by Consultant to the agencies charged with the enforcement of such laws, statutes, codes, ordinances, rules and regulations.

- M. Consultant shall prepare plans and specifications in a format that complies with all City requirements as well as all applicable county, state and federal requirements. Consultant shall be responsible for contacting the appropriate agencies and to determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though federal, state and county agencies may have approved such documents.
- N. Coordination with the City, other regulatory agencies, or Consultants of other ASR Program Projects shall be a continuing work item, continuing through the completion of Consultant's work as described in *Attachment 1* to the completion of the Program. Such coordination shall consist of regular progress and review meetings with the Contractor, City, Consultants of other ASR Program Projects, work sessions with the City's staff and the user agencies or as otherwise directed, and coordination with utility companies. Such coordination shall also include field and office reviews of plans and documents during development, as required in this Agreement. Consultant shall document all such meetings and work sessions and distribute notes of such meetings and work sessions to the City and others, as appropriate.
- O. Consultant shall, upon the request of the City, be represented at all Design/Programming meetings or hearings which involve or impact the Diversion Well Investigation/Project.
- P. Consultant shall complete a Final Report and, following its completion, Consultant shall assist the City in determining the best course of action to take to complete implementation of selected subparts of the Diversion Well Investigation/Project. The course of action may include a design-bid-build or alternate delivery. City reserves the right to structure the implementation in any such manner at its sole discretion.
- Q. The responsibilities and obligations of Consultant under this Agreement are not to be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, City's Representative or employee of the City.
- R. Consultant shall submit billings to the City for the services performed as required by this Agreement. During the progress of work covered by the Agreement, partial payments may be made to the Consultant at intervals of four weeks or greater time span.
- S. Consultant shall complete and deliver preliminary and final planning documents to the City within the time allotted for the work as stipulated in *Attachment 2* or as it is amended.
- T. Consultant represents that the statements of fact made in the proposal it submitted with its bid to perform professional services associated with the Diversion Well Investigation/Project are true and accurate and that the City reasonably relied upon such representations.

Section IV – Subconsultants

- A. These services shall be diligently performed by Consultant's regular professional and technical staff. In the event Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with the City approval, by practicing professional subconsultants outside of Consultant's regular employment.
- B. Prior to designating an outside professional to perform work or services under this Agreement, Consultant shall submit the name(s) of such professional, together with a resume of training and experience in work of like character and magnitude, to the City and receive prior written approval. The City shall have the right to reject any proposed subconsultant for reasonable cause. "Subconsultant" shall mean any person or business entity which is not an employee of Consultant.
- C. A subconsultant's services, performed under this Agreement, are considered the services of the Consultant. Delegation of services shall not be construed to create any contractual relationship between the City and such subcontractor. All design documents, contract documents, and other documents prepared and issued by subconsultant(s) are documents of the Consultant for the purposes of this Agreement. Consultant's delegation to subconsultant(s) of some of Consultant's services does not relieve Consultant of any liability for full, workmanlike and proper performance of the delegated service and for any liability for representations, warranties or promises made in connection with or arising from performance of the services. All representations, warranties and promises made in this Agreement extend to and apply to subconsultant's services.
- D. The City's communications with Consultant's subconsultants shall be through Consultant.

Section V - Schedule

- A. Consultant shall submit to the City, in writing, a Milestone Schedule setting out the milestone dates on which the Consultant plans to complete its work under this Agreement within twenty (20) working days of the effective date of this Agreement. The City shall have ten (10) working days to review the proposed milestone schedule, or as mutually agreed by the parties. The milestone schedule shall include, but not be limited to, all dates by which any known actions, decisions or information required from the City must be provided in order for Consultant to perform according to the schedule. The milestone schedule shall, when reviewed by the City, be incorporated herein by reference as **Attachment 2** or as it is amended. Consultant shall provide monthly schedule updates to the City in a mutually agreeable electronic format.
- B. Consultant shall make every reasonable effort to meet the Milestone Schedule. Meeting the deadlines contained in this Schedule shall not result in a higher design cost to the City nor shall quality of design be compromised to achieve these dates.
- C. The parties agree that in performing the terms, conditions and requirements of this Agreement by Consultant, time is of the essence. Consultant shall perform diligently and uninterruptedly and shall complete its work within the time schedule set forth herein.

Section VI - Compensation

- A. Payment to the Consultant for the performance of its services shall be as defined in *Attachment 3* and shall not exceed the sum of \$770,000.00, which payment shall be in accordance *Attachment 3*. It is understood and agreed by and between the Parties hereto, that the City shall pay Consultant for services furnished, and Consultant shall accept as full payment for such services, amounts of money computed in this Section.
- B. It is the Parties' intent that all professional services required for the construction of the Diversion Well Investigation/Project are to be provided by Consultant as part of its services as identified in **Section III** of this Agreement. The City's failure to list a specific service that would normally be provided shall not be cause to eliminate that service.
- C. In the event that either party desires to change the scope of the services for any reason which is not within the scope of the services as identified in **Section III** of this Agreement, such party shall submit to the other party a request for a Supplemental Agreement. Consultant will then submit a projection of the cost of the requested Supplement Agreement. Consultant's compensation under any Supplemental Agreement shall be as defined in *Attachment 3*. Any Supplemental Agreement shall be in writing and signed by representative of both parties. Neither party shall unreasonably disapprove a request for Supplemental Agreement. However, no additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement.
- D. Design changes required by (i) changes in applicable laws, statutes, codes, ordinances or rules and regulations of the City, Local, State, or Federal governmental agencies after the City's acceptance of construction documents or (ii) unreasonable extension, by no fault of Consultant, of the Milestone Schedule beyond the dates in *Attachment 2*, as amended from time to time, shall be compensated for pursuant to **Section VI.C.** of this Agreement. However, nothing in this paragraph shall be construed as granting Consultant the right to any additional compensation based upon lack of information concerning the Diversion Well Investigation/Project, as described in **Section III.C.** or its effects on the cost of work.
- E. Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any work beyond what has been specifically authorized in writing by the City.
- F. In the event that any part of the Diversion Well Investigation/Project is deleted or otherwise not designed or performed, compensation to Consultant for the Diversion Well Investigation/Project shall be payable only to the extent services are actually performed on said work, or portions of said work, in accordance with Consultant's approved payment schedule.
- G. Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and, provided that Consultant is timely paid amounts due from the City under this Agreement, shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities, funds or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations. If the City, in its sole discretion, reasonably requires lien and/or

verified claim releases in a form satisfactory to City and executed by Consultant and its subconsultants, they shall be submitted with Consultant's monthly invoices to the City.

- H. Consultant shall maintain current, accurate and complete records of all man hours expended and expenditures made by it in connection with the Diversion Well Investigation/Project. In accordance with **Section VII** of this Agreement, all such records shall be available for review by the City at all reasonable times upon written request by the City to Consultant.
- I. The final payment to Consultant shall not be made until after the Diversion Well Investigation/Project is accepted by the City and this Agreement is otherwise fully performed by Consultant.
- J. The City shall not be obligated to make any payment (whether an interim payment or Final Payment) to Consultant hereunder if any one or more of the following conditions exist:
 - (i) Consultant is in default of any of its obligations hereunder or under any provision of this Agreement.
 - (ii) Consultant has failed to make payments promptly to subconsultants or other third parties in accordance with the terms of its respective subconsultant agreements after the City has made payments to Consultant.
- K. No interim payment or other partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the services to which such interim payment or other partial payment relates, nor shall it relieve Consultant of any of its obligations hereunder with respect thereto.

Section VII - Examination of Records

- A. Consultant agrees to make available during regular business hours all of its and its subconsultant's calculations, sketches and drawings concerning the Diversion Well Investigation/Project such as the City may wish to examine during performance of the Agreement.
- B. Consultant agrees to maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by Consultant and, where relevant to method of payment, to make such material available at its office at reasonable times during the contract period, and for three (3) years from the date of final payment under the contract for inspection by the City or its authorized representatives.
- C. Consultant agrees to include in first-tier subcontracts under this Agreement a clause to the effect that the City, acting through its duly authorized designee, shall, until 3 years after final payment under the subcontract, have access to and the right to examine and any of the subcontractor's directly pertinent documents, including but not limited to, books, invoices, timesheets, papers, or other records involving transactions related to the subcontract.

- D. The periods of access and examination as noted above for records relating to (i) litigation or settlement of claims arising from the performance of this Agreement, or (ii) costs and expenses of this Agreement to which the City, acting through its duly authorized designee, has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally resolved.

Section VIII – Assignments/Parties to Agreement

- A. The list of Diversion Well Investigation/Project team members and key personnel, essential to the successful completion of the Diversion Well Investigation/Project and authorized to perform work under this Agreement are in *Attachment 4*. The list may only be amended during performance of this Agreement under the following procedure:
- (i) If Consultant is required to replace any of its key personnel, Consultant shall notify the City in writing of the desired change. No such changes shall be made until at least two (2) qualified replacement candidates are recommended by Consultant and a replacement is approved in writing by the City. The City's approval shall not be unreasonably withheld. Failure of Consultant to comply with the requirements of this provision may be the basis for the City's termination of this Agreement.
 - (ii) The City shall respond to Consultant's written notice regarding replacement of key personnel within fifteen (15) working days after the City receives the list of proposed changes. If the City or its designated representative does not respond within that time, the listed changes shall be deemed to be approved.
 - (iii) If during the term of this Agreement, the City determines that the performance of approved key personnel is not acceptable, it shall notify Consultant and give Consultant the time which the City considers reasonable to correct such performance. Thereafter, the City may require Consultant to reassign or replace such key personnel. If the City notifies Consultant that certain of its key personnel or the key personnel of a subconsultant should be replaced, Consultant will use its best efforts to replace such key personnel within a reasonable time but not to exceed thirty (30) calendar days from the date of the City's notice.
- B. Notwithstanding any other provision in this Agreement, it is the intent of the parties that all key personnel be engaged to perform their specialty for all such services required by this Agreement, and that Consultant's key personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.
- C. Neither Consultant, nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on the Diversion Well Investigation/Project, and Consultant shall make written inquiry of all of its subconsultants concerning the existence of or potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.

- D. The City is not obligated or liable under this Agreement to any party other than the Consultant named herein. Consultant understands and agrees that this is a Professional Services Agreement and it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting.
- E. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

Section IX - Ownership of Documents

- A. All deliverables, as described in *Attachment 1*, prepared by Consultant under this Agreement when delivered to and accepted by the City, shall become the property of the City when Consultant has been compensated by the City under the terms of this Agreement. Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder as more fully described in *Attachment 1*.
- B. The City shall have unlimited rights in the ownership of all deliverables, as described in *Attachment 1*, including the right to use the same on any other City project(s) without additional cost to the City, and with respect thereto the Consultant agrees to and does hereby grant to the City a non-exclusive royalty-free license to all data which Consultant may cover by copyright and to the deliverables to which Consultant may assert any rights or establish any claim under the patent or copyright laws or any other applicable laws.
- C. Consultant shall have common law, statutory and other reserved rights in the drawings, specifications and other documents, including those in electronic form, prepared by Consultant for use with respect to this Diversion Well Investigation/Project. However, Consultant gives the City an irrevocable license to use the drawings, specifications, and other documents prepared by Consultant for completion of this Diversion Well Investigation/Project. This license is for the benefit of the City and its assigns and permits the City to retain other architects, engineers and design professionals who may use the drawings, specifications and other documents for such purposes.

All drawings, specifications and other documents shall become the property of the City, at the conclusion of the Diversion Well Investigation/Project, whether the Diversion Well Investigation/Project for which they are made is executed or not, or the termination of the services of Consultant, whichever is earlier, and shall be delivered to the City clearly marked and identified in good order. Such documents may be used by the City to construct one or more like projects without the approval of, or additional compensation to, Consultant. Consultant shall not be liable for injury or damage resulting from reuse of drawings, specifications and other documents for a project in which Consultant is not also involved, the City will remove and obliterate from such documents all identification of the original Consultant, including name, address, professional seal and stamp.

- D. The deliverables, as described in *Attachment 1*, excluding Consultant's standard details and documents, shall not be used by Consultant on or for other projects without the written approval of the City, which shall not be unreasonably withheld.
- E. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Diversion Well Investigation/Project is not to be construed as publication in derogation of Consultant's or the City's rights.

Section X - Taxes and Licenses

- A. Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement and shall take out and keep current all required municipal, City, state or federal licenses required to perform its services under this Agreement. Consultant shall furnish the Project Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes.

Section XI - The City's Responsibilities

- A. The City shall:
 - (i) Use reasonable efforts to furnish all available information and data pertaining to the Diversion Well Investigation/Project now in the City's possession.
 - (ii) Pay the Consultant for its services in accordance with the requirements of this agreement.
 - (iii) Provide right of entry for Consultant's personnel in performing the services hereunder.
- B. Actions taken by the City under this Section shall not, in any way, relieve Consultant of its responsibilities for design deficiencies, errors or omissions.
- C. The City shall not be liable for the payment of taxes, late charges, or penalties of any nature incurred by Consultant in performing its services under this Agreement.
- D. The City makes no representations or warranties, express or implied, concerning the accuracy of information and data it provides pertaining to the Diversion Well Investigation/Project.

Section XII - Laws and Ordinances

- A. Consultant, at all times, agrees and shall observe and comply with all federal, state and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1974, and to comply with the City's Non-Discrimination and Equal Employment/Affirmative Action Program as set forth in *Attachment 5* which is attached hereto and adopted by reference as though fully set forth herein.

Section XIII - Status of Consultant

- A. It is understood and agreed that the status of Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as it is not intended, nor shall it be construed, that Consultant, or any member of its staff or any consultant or subconsultant, is an employee, officer or agent of the City for any purpose whatsoever.

Section XIV - Termination of Agreement

- A. The City may terminate this Agreement in whole or in part, at any time, upon written notice, with or without cause, at its sole discretion; provided, however, that in any case the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions in **Section III** of this Agreement and **Attachment 3**, but in no case shall payment be more than the Consultant's actual costs plus a reasonable sum for profit.
- B. After receipt of written notification that this Agreement has been terminated under this Section, Consultant shall incur no further costs other than reasonable termination costs associated with current activities.
- C. In the event of termination, all finished and unfinished Diversion Well Investigation/Project deliverables prepared by Consultant pursuant to this Agreement shall become the sole property of the City, subject to the provisions of **Section IX** of this Agreement.
- D. Termination shall not relieve Consultant from liability to the City for damages sustained as the result of Consultant's breach of this Agreement; and the City may withhold funds otherwise due under this Agreement until such time as the exact amount of damages, if any, has been determined.

Section XV - Insurance Requirements

- A. During the Program, Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.
- B. Consultant shall procure and maintain as the insurance coverage:
 - (i) Professional Liability Insurance to insure the adequate performance of all professional activities under this Agreement in an amount of \$1,000,000.
 - (ii) Workman's Compensation and Employer's Liability Insurance in an amount of: Workman's Compensation – Statutory, and Employer's Liability - \$100,000.00 each occurrence.

This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law.

(iii) Comprehensive (also commonly referred to as "Commercial") General Liability Insurance in an amount of \$500,000.00 per occurrence for bodily injury, death and property damage.

This policy shall be procured and maintained by the Consultant, shall be written in a comprehensive form and shall protect Consultant against all claims arising from injuries to persons (other than Consultant's employees) or damage to property of the City or others arising out of any negligent act or omission of Consultant, its agents, officers, employees, subconsultants or subcontractors in the performance of Consultant's services under this Agreement. It shall include Premises — Operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability coverages.

- C. Every such policy shall be procured and maintained with appropriate forms and insurers acceptable to the City. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to **Section XVI**, of this Agreement. The City shall be added as an additional named insured on every such policy with the exception of Workers Compensation and Professional Liability insurance. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Consultant shall be solely responsible for any deductible losses under any required policy.
- D. Every policy, except professional liability insurance, required above shall be primary insurance, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by this paragraph shall contain any exclusion for bodily injury or property damage arising from completed operations.
- E. Satisfactory Certificates of Insurance shall be filed with the City prior to the time Consultant starts any work under this agreement. Consultant shall furnish the City certificates of insurance in a form acceptable to the City evidencing that the insurance coverage required to be maintained by Consultant hereunder are in full force and effect. In addition, insurance policies applicable hereto shall contain a provision that provides that the City shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
- F. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and limits shall constitute a material breach of the Agreement. In such event, as its sole discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

- G. Consultant shall procure and maintain or shall cause any subconsultant of Consultant, concerning the services delegated under this Agreement to such subconsultant, to procure and maintain Professional Liability Insurance to insure its professional activities in an amount not less than \$1,000,000 and the insurance coverages required in **Section XV** of this Agreement.
- H. To the extent damages are covered by property insurance during construction, the City and Consultant waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The City and Consultant shall require of the contractors, consultants, agents and employees of any similar waivers in favor of the other parties identified herein.
Consultant shall require that all insurance policies, except for professional liability insurance, that are in any way related to the Diversion Well Investigation/Project, including those that are secured and maintained by subconsultants, include clauses providing that each underwriter shall waive all of its rights of recovery under subrogation or otherwise, against the City and the City's representatives.

Section XVI - Indemnification

- A. Consultant hereby agrees to indemnify, defend and hold harmless the City, its officials, officers, and employees from any and all third party claims, damages, suits, costs and expenses (including reasonable attorney fees, expert witness fees, court costs, and all associated defense fees), liability, actions or proceedings of any kind or nature to the extent caused or claimed to be caused directly or indirectly by the comparative fault of Consultant for negligent acts or errors or omissions, its agents, servants, employees or subconsultants occurring in the performance of its services under the Agreement. The insurance coverage specified in this Agreement constitutes the minimum requirements and these requirements do not lessen or limit the liability of Consultant hereunder.
- B. Consultant agrees that it will contractually obligate its subconsultants to indemnify and hold harmless the indemnitees identified in this Section to the same extent that Consultant is required to indemnify and hold harmless said indemnitees.
- C. In the event of the filing of record of a lien or verified claim against any property on which the Diversion Well Investigation/Project is located by Consultant, by a subconsultant, or by any other person or entity for which Consultant may be responsible, Consultant shall promptly remove the lien or claim in accordance with the laws of the State of Kansas.
- D. Consultant shall protect, defend, indemnify, and hold harmless the City from and against any claims, actions, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in the event that litigation is filed by one of Consultant's subconsultants for non-payment by Consultant to that subconsultant.
- E. Consultant shall take reasonable actions to inform the City of known potential patents on processes, designs, or devices that may be incorporated into the Diversion Well Investigation/Project. Consultant agrees to protect, defend and save harmless the City against any

claim or demand for payment for the use of any patented or copyrighted material, process, design, article or device that may enter into the work being performed by Consultant under this Agreement to the extent that the City shall have provided Consultant reasonable notice of such claim or demand for payment.

- F. The City does not agree to indemnify, hold harmless, exonerate or assume the defense of Consultant or any other person, or entity whatsoever, for any purpose whatsoever by or in connection with this Agreement.

Section XVII – Consequential Damages

- A. In no event shall either Party be liable in tort or in contract for any incidental, special, indirect or consequential damages of any kind, including, without limitation, claims for lost profits or loss of goodwill, even if that Party has been advised of the possibility of such damages, by reason of any breach or default under this Agreement. This section shall not be interpreted to affect in any way Consultant's obligations with respect to a third party.

Section XVIII- Force Majeure

- A. Neither Party shall be responsible nor deemed to be in default, on account of damages or delays in performance of the Agreement due to a cause beyond its control and not occasioned by its fault or negligence. Such causes include but are not limited to: Acts of God, labor disputes, strikes or lockouts, acts of war or terrorism; provided, however, that the existence of such causes shall not excuse the delaying or nonperforming Party from the resulting delay unless such Party shall have given the other Party written notice on any excusable delays referenced to above, within ten (10) days (or such additional time as may be approved by the other Party) after the delaying or nonperforming Party has actual knowledge that such occurrences will result in damages or delays.

Section XIX - Miscellaneous

- A. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law. The City's rights and remedies are separate and cumulative. No consent by the City, expressed or implied, to any breach of the Agreement or waiver or failure to exercise in any respect any right or remedy provided under this Agreement by the City waives or bars any future right or remedy hereunder or available at common law.
- B. Neither the City's review, approval or acceptance or, nor payment for, any of the work or services required to be performed by the Consultant under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- C. The laws of the state of Kansas will govern the construction and operation of and the remedies available under this Agreement. Venue for any lawsuit arising under or related to this Agreement shall be before the Eighteenth Judicial District Court of Kansas (Sedgwick County, Kansas) or the United States District Court for the District of Kansas sitting in Wichita, Kansas.

- D. In the event any dispute arises under this Agreement and during the time such dispute is being resolved, Consultant hereby agrees that it shall continue performance under this Agreement in accordance with the terms and conditions hereof since time is of the essence and City shall continue to compensate Consultant for all undisputed payment amounts. Consultant's failure to continue expeditious performance due to a dispute arising under this Agreement, at the option of the City, shall be construed as a material breach of this Agreement.
- E. Consultant and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.
- F. The term of this Agreement shall commence upon written Notice to Proceed from the City to Consultant and end upon final completion of the services to be provided hereunder by Consultant. The insurance and indemnification provisions of this Agreement shall survive such termination.
- G. The captions and headings set forth in this Agreement are for convenience and for reference only and shall not be construed so as to define or limit the terms and provisions hereof.
- H. This Agreement is intended as the complete integration of all prior oral or written understandings between the Parties. No prior or contemporaneous additions, deletions or other amendments shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement.
- I. Supplemental Agreements and other amendments to the Agreement shall require approval by the City in the manner required by City policy, provided that City Staff or the Project Manager (as otherwise provided in writing by the City) may negotiate and approve modifications to *Attachments 2 and 4*, on behalf of the City, as may be required from time to time.
- J. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.
- K. All notices, demands, or other documents or instruments required or permitted to be served upon either Party hereto shall be in writing and shall be deemed duly served when delivered in person to an officer or partner of the Party being served, by facsimile transmission or when mailed certified or registered mail, return receipt requested, postage prepaid addressed to parties at the addresses stated below:

City: Wichita Water Utilities (WWU)
City Hall, 8th Floor
455 N. Main
Wichita, KS 67202

Consultant: CH2MHILL, INC.
9193 S. Jamaica St.
Englewood, CO 80112

- L. By signing this Agreement, the representatives of the parties represent that they are duly authorized by their principal to execute this Agreement, and that they have agreed to be bound by all of its provisions.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

By: _____

Title: _____

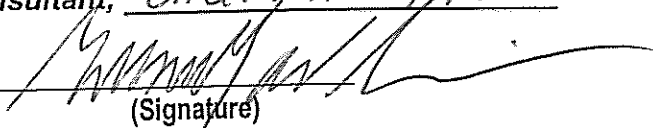
Date: _____, 2009

ATTEST:

City Clerk

APPROVED AS TO FORM: _____
City Attorney

Consultant, CHAM HILL, INC

By: 
(Signature)

Name: Gerald W. Simpson
(Type or Print)

Date: 7-1, 2009

Attachment 1 Scope of Work

Task A — Project Management

Objective: Establish and maintain project scope, schedule, and budget control, as well as procedures for effective communication.

CH2M HILL will develop a project management plan (PMP) and coordinate with the Program Manager to maintain scope, schedule, and budget for the project; prepare monthly status reports and invoices; and facilitate kickoff and regularly scheduled status meetings.

Assumptions

- Four status meetings with the Program Manager will be held in Denver. Up to two people will attend each meeting.
- Thirteen monthly status reports and invoices will be submitted.
- Attendance of up to three people at one kickoff meeting in Wichita with the Program Manager and the City.

Deliverables

- Project Management Plan.
- Monthly project status reports and invoices.
- Agenda and meeting minutes for one kickoff and four status meetings.

Task B — Review Background Information

Objective: Compile and review available existing data and other information to be used in developing the field investigation plan.

CH2M HILL will compile and review existing reports and data including applicable United States Geologic Survey (USGS) reports, lithologic data along the Little Arkansas River, previous investigations by the City and its consultants, and accessibility to properties within the study area.

Assumptions

- The available information is in a readily useable format (e.g., lithologic information from existing borings and wells is referenced to a survey datum, including horizontal and/or vertical elevations).
- Additional information is available, in the right format, from Burns and McDonnell.
- The Program Manager will provide any information to which CH2M HILL or Burns and McDonnell does not have access.

Task C — Project Development

Objective: Develop the recommended course of action to achieve the project goals.

Subtask C.1 – Project Implementation Plan

The Project Implementation Plan (PIP) will document the activities necessary to investigate the feasibility of using diversion wells to capture water from the Little Arkansas River. If the use of diversion wells is found feasible, document the approach to completing the conceptual design (including treatment, if necessary) and planning-level cost estimate for a diversion wellfield. The PIP will include the following elements:

- The activities necessary to investigate potential areas along the Little Arkansas River with favorable conditions for diversion wells.
- Timing of these activities and how they fit into the City's ASR program.
- Identification of the public, government, and institutional issues for the field investigation and future work.

CH2M HILL will conduct a milestone meeting with the Program Manager to review the draft PIP. CH2M HILL will incorporate the Program Manager's comments into the final PIP.

Assumptions

- One milestone meeting in Denver with Program Manager to discuss one draft PIP. Up to two team members will attend.
- One Final PIP will incorporate the Program Manager's comments.
- Program Manager will support CH2M HILL in securing necessary permissions and permits to implement the PIP.

Deliverables

- One draft and one final Project Implementation Plan.
- Agenda and meeting minutes from one milestone meeting.

Subtask C.2 – Field Investigation

Objective: Perform a field investigation to gather additional data on the subsurface lithology along targeted reaches of the Little Arkansas River. The field investigation will include drilling 10 test borings and performing a geophysical survey in the area adjacent to the Little Arkansas River over a distance of approximately 5 miles.

CH2M HILL will perform the following:

C.2.1 Prepare draft plans and specifications to implement the field investigation for the drilling subcontractor, Layne Western. Incorporate the Program Manager's comments into the final plans and specification documents.

C.2.2 Provide field oversight of the test boring investigation by a geologist or engineer qualified to log subsurface lithology and document the fieldwork. The field engineer or geologist will identify, and send to a qualified laboratory, up to four samples per boring for sieve analysis.

C.2.3 Through a subcontractor, Zonge, CH2M HILL will complete the geophysical survey. The subcontractor's work will include both the fieldwork to gather the data, as well as processing of the data into a useable format for understanding the subsurface conditions.

C.2.4 Analyze the subsurface data collected and identify up to two locations where test diversion wells will be installed. Coordinate with the Program Manager to incorporate property access restrictions.

C.2.5 Prepare a draft Technical Memorandum (TM) documenting the field data collection activities, the field data analyses, the selection of the two test well locations, and the proposed well testing plan. Review draft TM in a milestone meeting in Denver with the Program Manager and prepare a final TM incorporating comments from the Program Manager.

Assumptions

- No permits will be required for the 10 borings.

- Subcontract with Layne Western for the borings, monitoring wells, test wells, and pump tests. Test boring specifications will consist of a letter specification and one location drawing.
- Ten test borings will be drilled to a maximum depth of 100 feet each using the roto sonic drilling method and will be backfilled. Each test boring will require approximately 1 day to complete.
- Under contract to CH2M HILL, Zonge, will survey up to 5 miles of the land adjacent to the Little Arkansas River (which may not be contiguous) using electrical resistivity or time domain electrical magnetic surveying. The geophysical survey will require up to 10 field days to complete. The number of resistivity soundings will be identified in the field based on the amount of data necessary to provide an adequate density of readings to enable interpretation of the data.
- The Program Manager will secure permission from property owners to perform the field activities.
- One milestone meeting will be held in Denver with the Program Manager to discuss the draft Field Investigation TM. Up to two team members will attend. The Program Manager's comments will be incorporated into one final Field Investigation TM.

Deliverables

- One draft and one final Field Investigation TM.
- Agenda and meeting minutes from one milestone meeting.

Subtask C.3 – Install and Test Wells

Objective: Construct test diversion and monitoring wells and perform pumping tests to verify the feasibility and effectiveness of using diversion wells along the Little Arkansas River to capture river water. Pumping tests will occur in the spring of 2010 when water quality from the Little Arkansas River is representative of the water that will be stored in the ASR wells.

CH2M HILL will perform the following:

C.3.1 Obtain monitoring well, test well, and discharge permits required by DWR for up to two test diversion wells and 8 monitoring wells. The monitoring wells will be located to demonstrate that diversion from the river is occurring and that the deeper aquifer intervals are not being adversely affected. It is envisioned that the three shallow monitoring wells will be configured such that one monitoring well will be between the river and the pumping well (within approximately 50 feet of the river), the other two monitoring wells will be located on either side of the pumping well (in line with the pumping well and parallel to the river within approximately 100 feet of the river). It is envisioned that the deep monitoring wells will be located perpendicular to the river, on the opposite side of the pumping well. In addition to the monitoring wells, simple sand points will be manually driven into the ground near the edge of the river to measure drawdown effects immediately adjacent to the riverbed.

C.3.2 Prepare draft plans and specifications to implement construction and testing of the two test wells and associated monitoring wells. Review the draft specifications with Layne Western and the Program Manager to confirm scope and cost. Comments from Layne Western and the Program Manager will be incorporated into final plans and specifications.

C.3.3 Provide field oversight by a qualified geologist or engineer for the construction of up to two test diversion wells and eight monitoring wells. Construct the test diversion wells so they

can be used as permanent diversion wells in the future. The monitoring wells will consist of three shallow and one deep monitoring well at each test well location.

C.3.4 Set a temporary pump in each test well and conduct an 8-hour variable rate and a 72-hour constant rate pumping tests at each well. Provide oversight for the pumping tests and collect pumping rate and water levels. Water levels will be monitored in the monitoring wells prior to initiating the pumping tests to establish baseline conditions. The pumping tests will meet standards established by USGS, ANSI, and ASTM.

C.3.5 Collect eight samples of water from each pumping well and all monitoring wells for laboratory analyses: four samples during the variable rate test and four samples during the constant rate test (a total of 80 samples). At least one of these samples will be taken before pumping begins to establish baseline conditions. These samples will be analyzed for major ions, iron, arsenic, manganese, atrazine, nitrate-nitrite, orthophosphate, pH, specific conductance, and the stable isotopes of hydrogen, carbon, and oxygen (deuterium, carbon-13, and oxygen-18, respectively). In addition, temperature, pH, ORP, and conductivity will be measured in the field at the time of sample collection using YSI closed-cell flow-through instrument.

Collect three water samples from the Little Arkansas River adjacent to each pumping well for laboratory analyses: before the variable rate test and during and after the constant rate pumping test (a total of 6 samples). The water quality samples will be analyzed for major ions, atrazine, and the stable isotopes of hydrogen, carbon, and oxygen (deuterium, carbon-13, and oxygen-18, respectively).

CH2M HILL will use the three isotopes together to extrapolate conditions observed during the pumping tests to other parts of the wellfield. The carbon isotope signature, along with the deuterium and oxygen-18 signatures, will differentiate ancestral groundwater from groundwater that has been affected by agricultural activities:

- The river water's carbon-13 signature will likely be different from either the ancestral or irrigation water that has reached the groundwater. Carbon-13 is affected by microbial activity; it generates carbon dioxide dissolved as bicarbonate. Conversely, deuterium and oxygen-18 are integral components of the water molecule and are not a dissolved component of the groundwater.
- Deuterium is not affected by agricultural activities and oxygen-18 is. The surface water deuterium and oxygen-18 concentrations will come from upstream watersheds that will be different from concentrations from the local watersheds.

CH2M HILL will estimate the quantities of each of the water sources contributing water pumped during the pumping tests by tracking the signatures of the three isotopes.

Assumptions

- Test diversion wells will be 12 inches in diameter, will be completed with steel casing and stainless steel screen, and will be a maximum depth of 100 feet. The wells will be drilled and constructed by Layne Western using a reverse circulation drilling method. Each test diversion well will take approximately 14 days to drill and construct.
- Program Manager will secure permits for the two test diversion wells, and eight monitoring wells, as well as temporary permits for discharging water produced during the pumping tests to the Little Arkansas River without treatment.

- Water samples will be analyzed by a laboratory under contract to CH2M HILL. Samples will be analyzed for major ions, atrazine, and stable isotopes of hydrogen, carbon, and oxygen. Results from the stable isotope analysis will have a 1-month turnaround time, and major ions and atrazine analysis will have a 15-day turnaround time.
- Six 2-inch-diameter monitoring wells will be installed to a depth of 100 feet, and two 2-inch-diameter monitoring wells will be installed to a depth of 150 feet. Monitoring wells will be constructed with PVC in a borehole that was drilled using the direct rotary drilling method. The eight monitoring wells will take approximately 20 days to complete.
- Two, 1-1/2-inch sand points will be installed in the river perpendicular to the test wells.
- Pumping tests performed at each test diversion well will include an 8-hour variable rate test and a 72-hour constant rate pumping test.

Subtask C.4 – Analysis and Development of a Conceptual Wellfield

Objective: Analyze the water quality and pumping test data to evaluate whether diversion wells could be used to obtain water from the Little Arkansas River, evaluate whether treatment will be required prior to injection into the ASR wells, develop a conceptual design of a diversion wellfield and necessary treatment (if any), estimate the amount of water that can be practically obtained from the wellfield, and provide budget-level cost estimates for a diversion wellfield (including treatment, if necessary).

CH2M HILL will perform the following:

C.4.1 Analyze the pumping test results to estimate the local aquifer hydraulic parameters. Based on these estimated hydraulic parameters, determine the sustainable pumping rate of each well and estimate the potential pumping rates from vertical and radial collector wells. Using the pumping test data and water quality data, verify the hydraulic connection between the diversion well and the Little Arkansas River. Evaluate the best wellfield design (ranging from vertical wells to low-angle wells to infiltration galleries) and determine the capacity of the best wellfield design along the Little Arkansas River.

C.4.2 Analyze the water quality data to evaluate whether the diversion well water will require treatment for use as recharge water for the City's ASR wells.

C.4.3 Develop a conceptual design for a diversion wellfield, including the type of wells (vertical or collector), number of wells required, estimated depths, locations, and total yield. Develop conceptual designs for up to two different trains for treatment of 30 mgd of diversion well water to meet recharge water quality goals. Conceptual designs will include sizing of major unit treatment processes and support facilities, such as building enclosures, tanks, and pumps, and conceptual-level plan view drawings of the proposed treatment plants.

C.4.4 Prepare budget-level construction and life-cycle cost estimates for the wellfield development and two treatment plants.

Assumptions

- Availability of property will be incorporated into the conceptual design and may limit the well locations and potential capacity of the conceptual wellfield.
- Program Manager will provide metrics for life-cycle costing that are consistent with ASR Phase III surface water treatment plant cost estimate to include planning horizon, discount rate, interest rate, and month/year of start of operations.

- Budget-level cost estimate will include cost allowances and not detailed estimates for instrumentation and controls, electrical, piping and valves, sitework, yard electrical, plant computer system, and yard piping. No disinfection will be required for the potential treatment systems.
- One 4-hour meeting in Wichita will be conducted with the Program Manager and the City to review conceptual design and budget-level cost estimates. Up to three team members will attend. Review comments will be incorporated into the final conceptual design and budget-level cost estimates presented in the final report.

Task E — Final Report

Objective: Present the results of the project in a final report.

CH2M HILL will perform the following:

Prepare a report of the work conducted. The final report will contain the data obtained during the investigation, analyses of the data, conclusions, layout of the conceptual wellfield, construction cost estimate and an implementation plan. The TMs prepared during the project may be included as appendices.

Conduct a milestone meeting with the Program Manager and City in Wichita to discuss the draft report. Incorporate the review comments into a final report.

Conduct a milestone meeting to present the results of this work to the Groundwater Management District No. 2 (GMD2) board and/or other appropriate regulatory agencies (e.g., DWR).

Assumptions

- Availability of property may limit the well locations and potential capacity of the conceptual wellfield.
- The estimate on sustainable pumping rates will be based on analytical methods using aquifer parameters and water level responses observed during the pumping tests.
- One meeting in Wichita with Program Manager and City to discuss final results (up to four team members will attend).
- One meeting in Wichita to present the results of this work to the Groundwater Management District No. 2 (GMD2) board and/or other appropriate regulatory agencies (e.g., DWR). Up to three team members will attend.

Deliverables

- One draft and one final report (one hard and one electronic copy for each).
- Meeting minutes from two milestone meetings.

Attachment 2 Milestone Schedule

The schedule for completing this project is as shown in below.

Task	2009						2010						
	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
A - Project Management	k					s		s		s		s	
B - Background Information													
C - Project Development													
C.1 - Project Implementation Plan	m												
C.2 - Field Investigation				m									
C.3 - Test Diversion Wells and Pumping Tests													
C.4 - Analysis and Conceptual Design													
D - Support Services	as requested												
E - Final Report												m	m

Notes: k=kickoff meeting, s=status meetings, m=milestone meetings

Attachment 3 Wichita Diversion Well Investigation Compensation

Compensation by the CITY to CH2M HILL for Tasks identified in Attachment 1, Scope of Services, utilizing the schedule identified in Attachment 2, Schedule will be on a time and material basis. The work will be performed on an hourly rate schedule provided in Attachment 3, plus actual costs for direct expenses. The total estimated cost shall not exceed \$770,000 without agreement and authorization by both parties. Additional detail is provided in the following tables for this Attachment 3.

Wichita Diversion Well Investigation



CH2MHILL

Total Price Detail

Lowest Tasks, All Budgets, without Budget Subtotals, without Period Subtotals,
without Estimating Frequency Subtotals

Description	Per Diem Code	Unit	Quantity	Rate	Price
Top Task WT -					
Task WT.A1.01 - Project Management					
Administrative Assistant	19	HOURS	40	84.00	3,360.00
Administrative Assistant	19	HOURS	40	87.00	3,480.00
Dale Gabel	3	HOURS	20	215.25	4,305.00
Dale Gabel	3	HOURS	20	222.00	4,440.00
Debbie Whaley	3	HOURS	70	215.25	15,067.50
Debbie Whaley	3	HOURS	60	222.00	13,320.00
Kevin Bral	3	HOURS	22	215.25	4,735.50
Kevin Bral	3	HOURS	15	222.00	3,330.00
Lindsay Atkinson	8	HOURS	48	105.00	5,040.00
Subtotal for Labor			335		57,078.00
Subtotal for Labor and Overhead					57,078.00
Operating Expenses		DOLLARS	1,256	1.00	1,256.00
Operating Expenses (cents)		DOLLARS	50	0.01	0.50
Subtotal for Other Direct Expenses					1,256.50
Burns & McDonnell		DOLLARS	9,000	1.00	9,000.00
Subtotal for Subcontract					9,000.00
Travel		DOLLARS	2,624	1.00	2,624.00
Subtotal for Travel					2,624.00
Subtotal for Costs					69,958.50
Subtotal for WT.A1.01 - Project Management					69,958.50
Task WT.B1.01 - Existing Information					
Administrative Assistant	19	HOURS	8	84.00	672.00
Administrative Assistant	19	HOURS	8	87.00	696.00
Kevin Bral	3	HOURS	16	215.25	3,444.00
Lindsay Atkinson	8	HOURS	24	105.00	2,520.00
Subtotal for Labor			56		7,332.00
Subtotal for Labor and Overhead					7,332.00
Burns & McDonnell		DOLLARS	3,000	1.00	3,000.00
Subtotal for Subcontract					3,000.00
Subtotal for Costs					10,332.00
Subtotal for WT.B1.01 - Existing Information					10,332.00
Task WT.C1.01 - Project Development					
Administrative Assistant	19	HOURS	24	84.00	2,016.00
Administrative Assistant	19	HOURS	24	87.00	2,088.00
Bill Bellamy	1	HOURS	8	260.00	2,080.00
CADD Technician	11	HOURS	16	136.50	2,184.00
Contracts	5	HOURS	40	168.00	6,720.00

Wichita Diversion Well Investigation

Total Price Detail



CH2MHILL

Lowest Tasks, All Budgets, without Budget Subtotals, without Period Subtotals,
without Estimating Frequency Subtotals

Description	Per Diem Code	Unit	Quantity	Rate	Price
Dale Gabel	3	HOURS	10	215.25	2,152.50
Dale Gabel	3	HOURS	10	222.00	2,220.00
Debbie Whaley	3	HOURS	20	215.25	4,305.00
Debbie Whaley	3	HOURS	32	222.00	7,104.00
Dick Glanzman	3	HOURS	20	215.25	4,305.00
Dick Glanzman	3	HOURS	20	222.00	4,440.00
Jason Curl	6	HOURS	32	151.00	4,832.00
Jennifer Byrd	8	HOURS	20	105.00	2,100.00
Jennifer Byrd	8	HOURS	34	108.00	3,672.00
Kevin Bral	3	HOURS	148	215.25	31,857.00
Kevin Bral	3	HOURS	152	222.00	33,744.00
Lindsay Atkinson	8	HOURS	150	105.00	15,750.00
Lindsay Atkinson	8	HOURS	56	108.00	6,048.00
Rebecca Carovillano	4	HOURS	16	189.00	3,024.00
Rebecca Carovillano	4	HOURS	16	195.00	3,120.00
Specification Processor	12	HOURS	32	115.50	3,696.00
Subtotal for Labor			880		147,457.50
Subtotal for Labor and Overhead					147,457.50
Burns & McDonnell		DOLLARS	76,000	1.00	76,000.00
Collector Wells International		DOLLARS	19,200	1.00	19,200.00
Laboratory		DOLLARS	45,400	1.00	45,400.00
Layne Western		DOLLARS	241,500	1.00	241,500.00
Ruggles & Bohm		DOLLARS	6,200	1.00	6,200.00
Zonge		DOLLARS	41,500	1.00	41,500.00
Subtotal for Subcontract					429,800.00
Travel		DOLLARS	11,700	1.00	11,700.00
Subtotal for Travel					11,700.00
Subtotal for Costs					588,957.50
Subtotal for WT.C1.01 - Project Development					588,957.50
Task WT.E1.01 - Prepare Final Report					
Administrative Assistant	19	HOURS	16	87.00	1,392.00
Dale Gabel	3	HOURS	4	222.00	888.00
Debbie Whaley	3	HOURS	48	222.00	10,656.00
Dick Glanzman	3	HOURS	8	222.00	1,776.00
Editor	6	HOURS	16	151.00	2,416.00
Graphics	11	HOURS	16	141.00	2,256.00
Kevin Bral	3	HOURS	100	222.00	22,200.00
Lindsay Atkinson	8	HOURS	56	108.00	6,048.00
Rebecca Carovillano	4	HOURS	16	195.00	3,120.00
Subtotal for Labor			280		50,752.00
Subtotal for Labor and Overhead					50,752.00
Burns & McDonnell		DOLLARS	8,300	1.00	8,300.00

Wichita Diversion Well Investigation

Total Price Detail



CH2MHILL

Lowest Tasks, All Budgets, without Budget Subtotals, without Period Subtotals,
without Estimating Frequency Subtotals

Description	Per Diem Code	Unit	Quantity	Rate	Price
Subtotal for Subcontract					8,300.00
Travel		DOLLARS	3,200	1.00	3,200.00
Subtotal for Travel					3,200.00
Subtotal for Costs					62,252.00
Subtotal for WT.E1.01 - Prepare Final Report					62,252.00
Task WT.CT.01 - Contingency					
Other Expenses		DOLLARS	38,500	1.00	38,500.00
Subtotal for Other Direct Expenses					38,500.00
Subtotal for Costs					38,500.00
Subtotal for WT.CT.01 - Contingency					38,500.00
Subtotal for WT					770,000.00
Grand Total					770,000.00

Per Diem Schedule

Labor			
Per Diem Codes	2009 Hourly Rates	2010 Hourly Rates*	Labor Billing Titles**
01	\$252.00	\$260.00	Senior Program Manager; Senior Technology Fellow
02	\$236.25	\$243.00	Program Manager, Technology Fellow
03	\$215.25	\$222.00	Client Service Manager, Senior Project Manager, Principal Technologist
04	\$189.00	\$195.00	Project Manager/Senior Technologist
05	\$168.00	\$173.00	Associate Project Manager, Engineer Specialist
06	\$147.00	\$151.00	Project Engineer
07	\$126.00	\$130.00	Associate Engineer
08	\$105.00	\$108.00	Staff Engineer 2
09	\$89.25	\$92.00	Staff Engineer 1
11	\$136.50	\$141.00	Engineering/CAD Technician 5
12	\$115.50	\$119.00	Engineering/CAD Technician 4
13	\$99.75	\$103.00	Engineering/CAD Technician 3
14	\$84.00	\$87.00	Engineering/CAD Technician 2
15, 16	\$78.75	\$81.00	Engineering/CAD Technician 1
19	\$84.00	\$87.00	Office/Clerical/Accounting
<p>* Labor rates are subject to annual escalations</p> <p>** Billing rates are based on each individual's assigned per diem code; typical labor billing titles are provided for information only and are not a complete listing of available titles.</p>			
Expenses			
Subcontractors and Travel & Living Expenses			Actual costs
Auto Mileage			IRS rate

Attachment 4 List of Diversion Well Investigation Project Team Members and Key Personnel

This Attachment 4 lists the Project Team Members and Key Personnel for the Diversion Well Investigation Project.

This Attachment 4 supersedes all prior written or oral understandings of the project key personnel, and may only be changed by mutual agreement of the both parties.

Key Personnel

Dale Gabel, Project Director

Debbie Whaley, Project Manager

Kevin Bral, Senior Technical Advisor

Project Team Personnel

Bill Bellamy, Treatment Technical Advisor

Dick Glanzman, Geochemical Technical Advisor

Rebecca Carovillano, Quality Management

Jason Curl, Project Engineer

Lindsay Atkinson, Project Engineer

Jennifer Byrd, Project Engineer

Attachment 5

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

April 22, 2009

Bill Morris
Public Works Engineer
7th Floor City Building
455 N. Main
Wichita, Kansas 67202

Re: Facade Improvement Program

Dear Bill:

Thank you very much for spending the time to inform me regarding the Facade Improvement Program. Attached please find the Facade Improvement Petition, which has been unanimously approved by the Homeowners Association. In addition, every owner has endorsed, and signed the attached Facade Improvement Petition.

We are requesting, unanimously, on behalf of the Homeowners Association and each and every owner at the Lofts at St. Francis, that the City approve the attached petition.

In addition, Chapter One (2) (5) gives the Association authority to levy special assessments by duly held meeting or by written approval by a majority of unit owners. We have accomplished both.

Chapter I and Declaration 13.1 pages 9 & 10 of the Lofts' By-laws and Declaration are attached.

Again, thank you for your assistance in this regard and please let me know if you need anything further.

Very truly yours,


David Bryan:mjb
Enclosure

FACADE IMPROVEMENT PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record Lofts at St Francis Homeowners Association, LLC a Kansas 501 (c3) non-profit company) as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Lot 14-16, 4th. Now St. Francis Ave. English's Addition, a subdivision in Wichita, Sedgwick County, KS.

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq. as amended, as follows:

- (a) That there be designed and reconstructed a facade that will enable historically or architecturally significant buildings to be preserved and eliminate exterior code deficiencies. That said improvements be constructed according to plans and specifications approved by the City of Wichita.
- (b) That the estimated and probable cost of the foregoing improvement being ONE HUNDRED , TWELVE THOUSAND, SIX HUNDRED, TWENTY DOLLARS AND 16/100 (\$112,620.16) including a 10% contingency, exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after June 1st, 2008.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the

property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a square foot basis:

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
-------------------	-----------	------

IMPROVEMENT DISTRICT

Lofts @ St Francis Homeowners Association, LLC

Lot 14-16, 4th.Now St. Francis Ave. English's Addition, a subdivision in Wichita, Sedgwick County, KS.

Keto Miller President

BY:

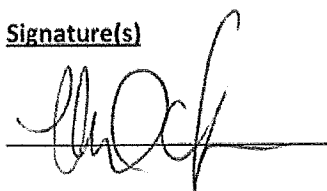
Dr. M. J. Bond of Dwyer

ITS:

Hampton Associates, Inc.
Hampton Associates, Inc.

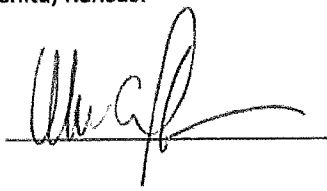
The Lofts at St. Francis Façade Approval Petition

Owners of the Lofts at St. Francis condos (whose legal descriptions are listed below) hereby join in the petition for the façade improvement project as outlined in the Façade Improvement Petition that was approved by the Homeowners Association.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 100	The Lofts at St. Francis, LLC	 Member	11/20/08

Legal Description:

Unit 100, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 101	The Lofts at St. Francis, LLC	 Member	11/23/08
----------	-------------------------------	--	----------

Legal Description:

Unit 101, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 102	James & Sharon Jury		2/02/09
			2/02/09

Legal Description:

Unit 102, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 103	Erik Breen Dave Harris		3/15/2009
----------	-----------------------------------	--	-----------

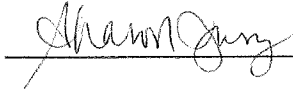
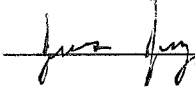
Legal Description:

Unit 103, in The Lofts at St. Francis, a Condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 104	Keith Mullane		2/2/09



Legal Description:

Unit 104, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 105	James & Sharon Jury		2/2/09
			2/2/09

Legal Description:

Unit 105, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 200	Gary & Carolyn Salyer		2/2/09
			

Legal Description:

Unit 200, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 201	Jason Kravarik		2/2/09
----------	----------------	--	--------

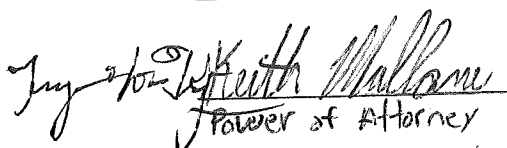

Legal Description:

Unit 201, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

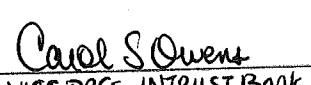
Unit 202	John Gowring		4/11/09
----------	--------------	--	---------

Legal Description:

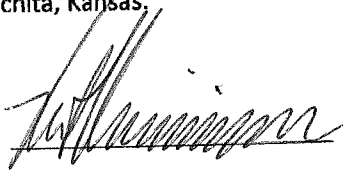

Unit 202, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 203	Tracy & Kari Toy	 Power of Attorney	3/4/09
			3/4/09


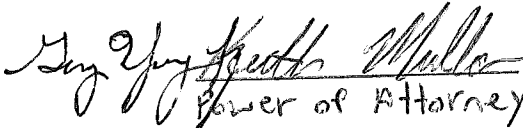
Legal Description:
Unit 203, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 300	Wichita OB-GYN ASSOCIATES, PA 401(C) PROFIT SHARING PLAN FBO Duke Naiphon BYRON CLINE	 VIEE PRES., INTRUST Bank, NA Trustee, Wichita OB-GYN Associates, PA Profit Sharing Plan	4/20/09
----------	---	--	---------

Legal Description:
Unit 300, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 301	Rick & Rebecca Kimminau		2/3/2009
			2/3/2009

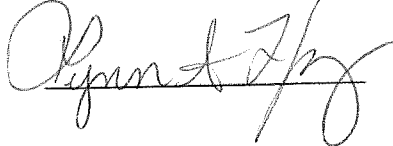
Legal Description:
Unit 301, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 302	 Gary Young	 Power of Attorney	4/7/09
----------	---	---	--------

Legal Description:
Unit 302, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 303	Ryan Garlow Corrie Garlow	 Corrie Garlow	2/3/09 2/3/09
----------	------------------------------	---	------------------

Legal Description:
Unit 303, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 304	Lynn A. Trefz		02/02/2009

Legal Description:

Unit 304, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 305	Steve Barger Kirk Short		4/20/09
----------	---------------------------------------	--	---------

Legal Description:

Unit 305, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 400	Steve Sartan Dr. A. Pfeuffer		2/2/09
----------	--	--	--------

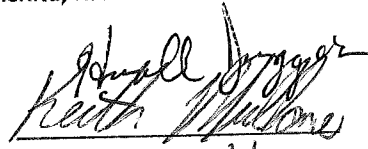
Legal Description:

Unit 400, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 401	Matt Moneymaker	 Power of Attorney	4/8/09
----------	-----------------	---	--------

Legal Description:

Unit 401, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 402	Harold & Kelly Jagger	 Power of Attorney	3/3/09
----------	-----------------------	---	--------

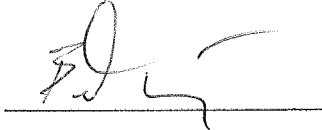

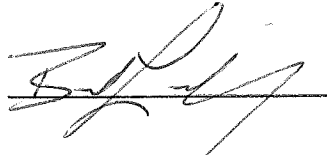

Legal Description:

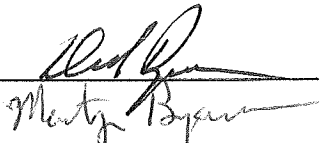
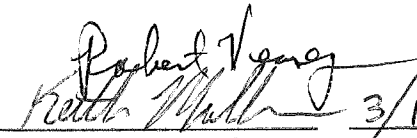
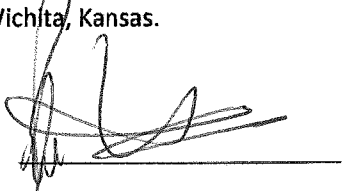
Unit 402, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

Unit 403	Jeff Riemann Kirk Short		4-7-09
----------	---------------------------------------	--	--------

Legal Description:

Unit 403, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4th, Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 404	Ryan Garlow Corrie Garlow	See Unit 303 also, Ryan Garlow Corrie Garlow	
Legal Description: Unit 404, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 405	Brad English		2-2-09
Legal Description: Unit 405, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 500	Jeremy Grey		4/14/09
Legal Description: Unit 500, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 501	Brad Ludwig		2/2/09
Legal Description: Unit 501, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 502	Adam Erickson	 Keith Mallow Power of Attorney	3/15/09
Legal Description: Unit 502, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			

<u>Condo #</u>	<u>Owner(s)</u>	<u>Signature(s)</u>	<u>Date</u>
Unit 503	David Bryan MARTY BRYAN	 Marty Bryan	2/2/09
Legal Description: Unit 503, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 504	Robert Veazey	 Robert Veazey Power of Attorney	3/12/09
Legal Description: Unit 504, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			
Unit 505	Ron Hale		2-2-09
Legal Description: Unit 505, in The Lofts at St. Francis, a condominium located on Lots 14-16, 4 th , Now St. Francis Ave. in English's Addition, a subdivision in Sedgwick County, Wichita, Kansas.			

LIMITED POWER OF ATTORNEY
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Tracy Toy, owner of record of Unit 203, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

ACKNOWLEDGEMENT

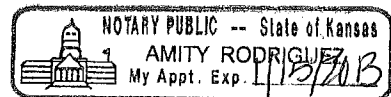
On this 25 day of February, 2009, before me a Notary Public in and for Kansas, came Tracy Toy who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

Amity Rodriguez
NOTARY PUBLIC

My Commission Expires

1/15/2013



LIMITED POWER OF ATTORNEY
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Cyrena Young, owner of record of Unit 302, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

ACKNOWLEDGEMENT

On this 3rd day of April, 2009, before me a Notary Public in and for Cyrena Young, came KDC K0197350 who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

Cindy Patton-Smith
NOTARY PUBLIC

My Commission Expires

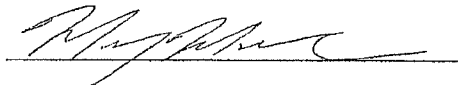
4-20-10



LIMITED POWER OF ATTORNEY
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Matthew J. Moneymaker, owner of record of Unit #401, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

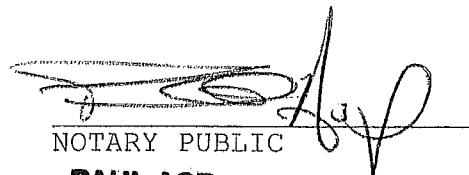
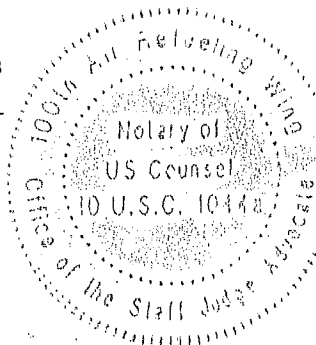


ACKNOWLEDGEMENT

On this 08 day of April, 2009, before me a Notary Public in and for _____, came Matthew J. Moneymaker who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

My Commission Expires
10 June 2012

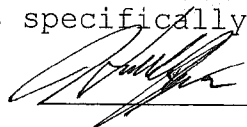


NOTARY PUBLIC
PAUL ASP
Paralegal
Notary by Federal Statute
10 U.S.C. 1044a

LIMITED POWER OF ATTORNEY
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Harold N. Jagger II, owner of record of Unit 402, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.



ACKNOWLEDGEMENT

On this 24th day of February, 2009, before me a Notary Public in and for CALIFORNIA, came HAROLD N. JAGGER II who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.


NOTARY PUBLIC

My Commission Expires

Oct 5, 2011



LIMITED POWER OF ATTORNEY
(K.S.A. 58-601 - 58-603)

KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Robert C. Erickson, owner of record of Unit 502, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

ACKNOWLEDGEMENT

On this 3 day of February, 2009, before me a Notary Public in and for Laura Russell, came Robert C. Erickson who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.



Laura Russell
NOTARY PUBLIC

My Commission Expires
2/2/2010

DURABLE POWER OF ATTORNEY

KNOWN BY ALL MEN BY THESE PRESENTS, that on this 31st day of May, 2008. I, Adam Erickson, single ("Principal"), do hereby constitute and appoint Robert Erickson, whose Mailing Address is: 1721 N. Callahan Wichita KS 67212, my true and lawful attorney-in-fact for me for the purposes set forth in this instrument with respect to the following real estate located at 201 S. St. Francis (Street Address) Wichita KS 67202 (hereinafter referred to as the Subject Property):

1. **Powers granted my attorney-in-fact.** I hereby give, grant and bestow upon my attorney-in-fact the following powers:
 - (a) to sell, transfer and convey the homestead and any other real property; to make, execute, acknowledge, endorse and deliver for me all contracts, extensions, closing statements, assignments, escrow agreements, affidavits, deeds and all other documents and instruments of whatever kind necessary to consummate the sale of the Subject Property upon whatever terms my attorney shall deem acceptable; to transfer and convey to any Grantee whomsoever for such sum and on such terms and with such agreements as to him or her shall seem proper; deliver good and sufficient conveyances for the same upon any such consideration and with any such clauses, covenants and agreements to be therein contained as my attorney-in-fact shall think fit and convenient;
 - (b) to purchase, acquire, manage, and control all of my interest in and to the Subject Property; to demise or lease Subject Property to such person or persons

and for such rent as he may see fit; to make, execute and acknowledge all documents necessary to purchase, acquire, lease or manage Subject Property;

- (c) to borrow money on my behalf from any individual or institution; to make, execute, deliver and acknowledge any mortgages, deeds of trust, promissory notes, construction loan agreements, interim financing agreements, long-term financing agreements, or any other forms of encumbrances thereon as my attorney-in-fact shall deem necessary;

- (d) to recover, collect and receive all sums of money which shall become due and owing to me in my name by means of any sale, conveyance or lease and to take all lawful ways and means for the recovery thereof, to execute and deliver sufficient acquittances, releases and discharges therefor as well as of any lien or liens securing any obligation arising in connection therewith;
 - (e) to act under changed conditions, the exact nature of which cannot now be foreseen, it being intended to vest in my said attorney, and I do hereby vest in my said attorney, full power to control and manage Subject Property, giving and granting to my attorney-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in connection with the Subject Property.
- 2. **Enumeration of Powers is Not a Limitation of Powers.** The foregoing enumeration of powers shall not be held to limit or restrict in any manner the powers of my attorney-in-fact to deal in any manner with respect to Subject Property.
 - 3. **Ratification of Attorney's Acts.** I hereby ratify and confirm all that my attorney-in-fact may or shall lawfully do or cause to be done by virtue of the powers herein granted my attorney-in-fact.
 - 4. **Hold Harmless for Reliance upon this Document.** I covenant and agree to hold harmless any person who may act in reliance upon the authority granted herein to my attorney-in-fact.
 - 5. **Recording of Power Attorney.** This Durable Power of Attorney may be recorded in the office of the Register of Deeds of the county in which the Subject Property is located.
 - 6. **Revocation.** This Power of Attorney shall remain in full force and effect unless, and until, I record a revocation of this Power of Attorney in the office of the Register of Deeds of the county in which the Subject Property is located.
 - 7. **Joint Consent.** We hereby give our joint consent to the sale, transfer, mortgage or other alienation of the above subject property, and our appointed attorney in fact may so alienate our interests, and we agree that in said agent doing so, the consent of such attorney in fact constitutes our consent as principals to such alienation, as applicable or required by Article 15, Section 9 of the Kansas Constitution. **This Power of Attorney has been executed by both the husband and wife when that relationship exists.**

THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT SHALL NOT TERMINATE IF I BECOME DISABLED OR IN THE EVENT OF LATER UNCERTAINTY AS TO WHETHER I AM DEAD OR ALIVE.

For the purpose of this document, wherever the singular is used, the plural is implied and understood.

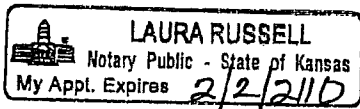
[Signature]
[Signature]

STATE OF }
 } ss.
COUNTY OF }

This instrument was acknowledged before me on May 31, 2008 by
Adam Erickson and
Robert Erickson

Laura Russell
- Notary Public

My Appointment Expires:



LIMITED POWER OF ATTORNEY
(K.S.A. 58-601 - 58-603)

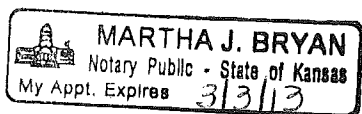
KNOWN ALL MEN BY THESE PRESENT:

That I, the undersigned, Robert M. Veazey, owner of record of Unit 504, Lofts at St. Francis, Wichita, Sedgwick County, Kansas do hereby authorize HOA President, Keith Mullane or David Bryan, HOA Board of Director's Officer, to sign my name on the Lofts at St. Francis Facade Approval Petition. I hereby appoint Keith Mullane or David Bryan my Attorneys in Fact for the sole and exclusive purpose of signing such petition, and for no other purpose and as such is specifically limited thereto.

ACKNOWLEDGEMENT

On this 24th day of February, 2009, before me a Notary Public in and for Kansas, came Robert M. Veazey who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.



Martha J. Bryan
NOTARY PUBLIC

My Commission Expires
3/3/13

CHAPTER I -- ASSESSMENTS

1. Purpose of Assessments:

Assessments shall be used for the management, operation, cleaning, repair, maintenance, care, improvement, and alteration of the Common Elements and services related to the use and enjoyment of the Common Elements.

2. Determination of Assessments:

The Board shall have the power and authority to determine the amount of the general and special assessments. If the monthly assessments for any year will be more than 120% of the previous year's monthly assessment, the additional assessment must be approved at a duly held meeting or by written approval by a majority of the unit owners.

3. Allocation:

Assessments shall be allocated against each Owner and Unit according to the percentage interest of such Owner and Unit in the Common Elements

4. Payment of Assessments:

It is the responsibility of each Owner of a Unit to pay monthly and/or special assessments for the Unit's share of the Association's expenses and reserve allocation. Monthly assessments (i.e. homeowner monthly fees, water/sewer and/or special assessments) shall be due in advance on or before the first day of the month. Payment is to be forwarded to the Management Company. An owner shall be deemed to be in good standing and entitled to vote at any annual meeting or at a special meeting of the owners, within the meaning of the By-Laws, if and only if he shall have fully paid all assessments made or levied against him and the unit owned by him.

5. Special Assessments:

In addition to monthly assessments, the Association may levy Special Assessments as explained in the Declaration.

6. Delinquency:

Assessments will be past due and subject to a late charge if not paid in full by the end of each month. The assessment will remain past due until paid in full, together with all costs, penalties, and interest. Assessments shall be subject to a 10% penalty if unpaid by the end of the month in which they are due.

7. Fines:

The Board shall have the power to levy reasonable fines against any Owner who has breached or continues to breach any of the provisions of the Declaration or By-laws of the Association.

9. No Exemption:

No Owner may exempt himself from liability for his assessments by waiving use of the Common Elements or abandoning his Unit.

10. Lien for Assessments:

The Association may file a lien on a Unit for unpaid assessments. The lien will be recorded in the office of the Sedgwick County Register of Deeds. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association

11. Ad Valorem Taxes and Utilities:

Each Owner shall be responsible for paying county property taxes or other assessments against the Owner's Unit. Each Owner shall also be responsible for paying all utilities delivered to the Owner's Unit.

12. Penalty Procedures:

If an Association rule or regulation is broken, the following penalty procedure shall be followed:

- a. Letter from Management is sent to Homeowner describing the violation, giving Homeowner a stated number of days to correct the violation.
- b. If same violation occurs, the Association will take necessary action to remedy the violation and the Homeowner will be assessed the cost, if any, to remedy the violation.
- c. The third and subsequent violations will result in a \$50 penalty to be assessed per occurrence, as well as assessing the Homeowner the cost, if any, to remedy the violation.

the foregoing will be deemed to have been given on the date that it is mailed or hand-delivered.

11.4 Bylaws. The Association shall be governed by the Bylaws attached hereto as Exhibit G as such Bylaws may be amended from time to time.

12. Duties of the Association. The Association shall be responsible for the exclusive management, control, maintenance, repair and replacement of the Common Areas, and pursuant to the easements created under Article 3.1(b), provided, however, that each Owner shall be responsible for keeping the Limited Common Areas designated for use in connection with such Owner's apartment in good, clean, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of exterior surfaces of the Building and the Garages, including, without limitation, the maintenance and repair of roofs, exterior windows, and doors ("Exterior Surfaces"), as well as the maintenance and repair of all Common Areas, all to the extent and at such times as deemed necessary by the Board. The Association shall not be responsible for maintenance or repair of door opening mechanisms in the Garages, including tracks, rollers, motors, remote controls, or any other component thereof. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be a part of the Association assessment. The Association shall have a reasonable right of entry to any apartment, Limited Common Area, Common Area or Garage for the purpose of discharging the duties imposed on it herein. The Association may, at the discretion of the Board, enter into contracts for the professional management of the Property.

13. Assessments.

13.1 Assessments. The assessments levied by the Association shall be used to discharge the duties imposed on the Association hereunder and for other purposes as authorized herein. Proper uses of the assessments levied by the Association may include, but are not limited to, the expenditure of funds for taxes, fees, expenses, charges, levies, premiums, expenditures and other costs ("Common Expenses") of the Association for:

- a) Repairing, replacing, and maintaining the Common Areas;
- b) Installing, maintaining, and repairing utilities upon, across, over and under any part of the Property;
- c) Furnishing garbage and trash pick up and water and sewer services (if not separately metered);

- d) Obtaining and maintaining insurance in accordance with the provisions of Article Fourteen hereof;
- e) Painting, repairing, replacing, and maintaining all original Exterior Surfaces of the Building and Garages and other portions of the Common Areas;
- f) Establishing and maintaining reserves for repairs, maintenance, taxes, adding amenities and improvements to the Common Areas, including but not limited to, elevators and fire protection system, capital improvements, and other purposes;
- g) Carrying out all other powers, rights, and duties of the Association;
- h) Generally for any other purposes and uses that the Board shall determine to be necessary to meet the primary purposes of the Association; and
- i) Fees for management, maintenance, legal, accounting, and other professional services.

13.2 Assessment Years. At such time as each apartment is conveyed by Developer to another Owner, at such closing the grantee or grantees will commence payment of monthly Association dues.

13.3 Apportionment of Annual Assessments. The Association's total annual assessment for each year shall initially be apportioned among all apartments in accordance with the fractional ownership of each as set forth in Exhibit H. The Owner of each apartment shall be personally liable for each such assessment which is assessed against such apartment, and in case of multiple Owners of an apartment, each such Owner shall be jointly and severally liable for each such assessment.

13.4 Determination of Amount of Annual Assessments. The Board shall determine, levy, and assess the Association's annual assessments. If the Board proposes to determine, levy, and assess an annual assessment per apartment more than twenty percent (20%) greater than the amount of the annual assessment for that apartment for the immediately preceding assessment year, then the Board shall give written notice thereof to all Owners at least thirty (30) days in advance of the commencement date of the particular assessment year notifying them of such proposed increased annual assessment.

13.5 Special Assessments. In addition to the annual assessments authorized above, the Board may upon thirty (30) days advance written notice to the Owners at any time determine, levy, and assess in any assessment year, at the Board's option, either with or without a vote of the members of the Association, a special assessment applicable to that particular assessment year and for any such longer period as the Board may determine, for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of any portion of the Property.

13.6 Due Dates for Assessment Payments. Unless otherwise determined by the Board, the annual assessments, and any special assessments which are to be paid in monthly installments, shall be paid monthly in advance and shall be due and payable to the Association without notice on the first day of each month. If any such monthly installment is not paid within ten (10) days after it is due, then the Board may assess a "late charge" thereon in amounts to be determined by the Board from time-to-time.

13.7 New Owner Assessment. Each time an apartment is resold, the new owner thereof shall pay, in addition to the other assessments described herein, a one time "new owner assessment" equal to twice the amount of the monthly assessment then being charged upon the apartment acquired by the new owner, after which the new owner will pay the same monthly assessment as then being charged against that apartment. The "new owner assessment" will not apply to the initial sale of an apartment from the Developer.

13.8 Lien for Assessments. All sums assessed by the Association to any apartment but unpaid shall constitute a lien on such apartment prior to all other liens except only (i) tax liens on the apartment in favor of any governmental unit or special district, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the Board in a like manner as a mortgage of real property provided that any such foreclosure case is commenced within three years after the date the notice of such assessment or lien is recorded. During any such foreclosure the apartment Owner shall be required to pay a reasonable amount for assessments for the apartment, if so provided in the Bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Board shall have power to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

Where the mortgagee of a first mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the

City of Wichita
City Council Meeting
July 28, 2009

TO: Mayor and City Council

SUBJECT: Petition to Renovate Building Facade in the Core Area (District I)

INITIATED BY: Office of Urban Development

AGENDA: Consent Agenda

Recommendation: Approve the petition and adopt the resolution.

Background: In 2006, Real Development purchased the former mattress factory located at the southwest corner of St. Francis and William in Downtown Wichita and converted it to a 28-unit residential condominium property. All but two of condo units have been sold and are occupied. In 2008, heavy spring and summer rainfall caused rainwater to enter some condo units through cracks in the brick façade of the building, causing serious damage. The building is located adjacent to the Intrust Bank Arena, and it is believed that construction work on the arena may have contributed to cracks in the façade.

Some emergency repair work was completed on the building in the summer of 2008, but the entire building façade needs tuck-pointing to ensure it will remain water-tight on a long-term basis. The Lofts at St. Francis Homeowners Association has applied to the City's Façade Improvement Program to finance the needed façade repairs with special assessments. A petition signed by 100% of the condo owners has been submitted for this purpose.

Analysis: Under the recently approved changes to the policy and procedures for the Façade Improvement Program, special assessments must be levied against the benefiting property prior to starting the improvement project, by means of adoption of a maximum assessment ordinance following a public hearing. The attached resolution sets a public hearing for August 18, 2009.

The Homeowners Association has solicited competitive bids for the façade repair work from three qualified contractors, with the lowest bid being \$92,940. Allowing for a 10% contingency, 2% Public Works administrative fee and architectural/inspection costs, the total petition amount is \$112,620. Work completed prior to now is not included in the petition amount and only eligible costs will be paid.

The recent changes to the guidelines for this program include a requirement that the amount of the façade program funding be at least match with private investment. This façade repair project does not include a concurrent private investment. However, when the property was redeveloped by Real Development in 2006, the private investment was many times the amount of the current façade project. The building is now appraised by Sedgwick County for over \$6,000,000. Because of this, the Homeowners Association requests the City consider the matching requirement to be fulfilled and waive the requirement for a new appraisal.

Another requirement is a financial analysis that demonstrates the need for public financing to complete the project. This project does not lend itself to this type of gap analysis; however, staff has determined through contact with banks that conventional financing will be impossible to obtain for exterior repairs to a residential condominium property like this. Each individual condo owner would be required to personally fund a share of the cost.

Financial Considerations: The maximum assessment amount is \$112,620. The actual amount to be assessed to the property, not to exceed \$112,620, will be based on a final statement of costs following completion of construction and will be financed with 15-year special assessment G.O. bonds.

Goal Impact: This project addresses the Dynamic Core Area goal by facilitating improvements to a privately owned building in the Arena Neighborhood Redevelopment Plan area.

Legal Considerations: State Statutes provide the City Council authority to use special assessment funding for the project. The procedures for using a maximum assessment ordinance call for a public hearing to be held not less than 10 days following adoption of a resolution approving the façade improvement project and setting the public hearing. The attached resolution sets August 18, 2009 as the public hearing date.

Recommendations/Actions: It is recommended that the City Council approve the petition, adopt the resolution and authorize the necessary signatures.

Attachments: Petition and Resolution

First Published in the Wichita Eagle on July 31, 2009

RESOLUTION NO. 09-227

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING IMPROVEMENTS TO AREA WALLS ON PUBLIC WAY OR LAND ABUTTING PUBLIC WAYS CONSISTING OF FAÇADE IMPROVEMENTS TO THE PORTION OF 201 S. ST. FRANCIS THAT ABUTS PUBLIC WAYS, INCLUDING ST. FRANCIS AND WILLIAM STREETS IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING IMPROVEMENTS TO AREA WALLS ON PUBLIC WAY OR LAND ABUTTING PUBLIC WAYS CONSISTING OF FAÇADE IMPROVEMENTS TO THE PORTION OF 201 S. ST. FRANCIS THAT ABUTS PUBLIC WAYS, INCLUDING ST. FRANCIS AND WILLIAM STREETS IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing improvements to area walls on public way or land abutting public ways consisting of façade improvements to the portion of 201 S. St. Francis that abuts public ways, including St. Francis and William streets.

SECTION 2. That the estimated probable cost of the foregoing improvement is \$112,620, payable by the improvement district.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

Lots 14-16, 4th Now St. Francis Ave., English's Addition,
a subdivision of Wichita, Sedgwick County, Kansas.

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a square foot basis.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 6. The approved estimated cost of the Improvements is the estimated cost of the Improvements as set forth in this Resolution. The Finance Director shall prepare a proposed assessment roll for the Improvements which shall set forth the proposed maximum assessment against each lot, piece or parcel of land within the improvement district for the Improvements in the manner set forth in this Resolution based on such estimated cost of the Improvements. The proposed assessment roll shall be maintained on file with the City Clerk and be open for public inspection. Following preparation of the proposed assessment roll, the Governing Body shall hold a public hearing on the proposed maximum assessments on August 18, 2009, or the first regularly scheduled City Council meeting thereafter after compliance with the notice provisions set forth in this paragraph. The City Clerk shall publish notice of the public hearing for the improvement district at least once not less than 10 days prior to the public hearing, and shall mail to the owner of the property liable to pay the assessments, at its last known post office address, a notice of the hearing and a statement of the maximum cost proposed to be assessed all in accordance with K.S.A. 12-6a09.

SECTION 7. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 8. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 28th day of July, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

City of Wichita
City Council Meeting
July 28, 2009

TO: Mayor and City Council

SUBJECT: Community Event with alcohol consumption – Resolution All America City Street Party (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: A community event application with alcohol consumption allowed has been submitted for the All-America City Street party in Old Town Square, scheduled for Friday, July 31st from 6 to 9 p.m. In accordance with Section 3.11.065(d) of the Code of the City of Wichita and the Community Events Procedure, a resolution is required, authorizing consumption of alcoholic liquor on sidewalks and on public streets which have been closed to motor vehicle traffic during such licensed community event. Upon review of the community event application for this event, a copy of which is attached hereto, and upon consideration of the factors set forth in Section 3.30.080 of the code of the City of Wichita, the Council shall determine if such approval should be given.

Analysis: Staff has reviewed the application for the community event and for the consumption of alcoholic liquor and the factors set forth in Section 3.30.080 of the City Code and recommends approval of the same.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council grant its approval of the Resolution and authorize the necessary signatures.

RESOLUTION NO. 09-258

**A RESOLUTION AUTHORIZING THE CONSUMPTION OF ALCOHOL LIQUOR
ON PUBLIC STREETS DURING ALL AMERICAN CITY STREET PARTY.**

WHEREAS, the City Council has approved as a community event , the All American City Street Party, to occur on July 31, 2009.

WHEREAS, the City Council has approved Mead Street, 2nd street to Moore Street and Moore Street, 2nd Street to Mead Street to be closed to vehicular traffic for such event from 5:00 p.m. to 9:00 p.m.

WHEREAS, a temporary permit has been issued by the State of Kansas and the City of Wichita for the consumption of alcoholic liquor at the All American City Street Party.

NOW, THEREFORE, BE IT RESOLVED that the City Council, pursuant to Section 3.11.065(d) of the Code of the City of Wichita, grants its approval for the consumption of alcoholic liquor on the city streets, sidewalks and public right of ways which are located within the designated event area of the All American City Street Party on July 31, 2009.

ADOPTED by the governing body of the City of Wichita, Kansas, this 28th day of July, 2009.

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett
City Clerk

(SEAL)

Approved as to Form:

Gary E. Rebenstorf
Director of Law

Second Reading Ordinances for July 28, 2009 (first read on July 21, 2009)

ZON2009-00018 – City zone change from SF-5 Single-family Residential (“SF-5”) to GO General Office (“GO”) and MF-18 Multi-family Residential with a PO Protective Overlay; generally located south of 53rd Street North, west of Meridian Avenue. (District VI)

ORDINANCE NO. 48-384

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

CUP2009-00013 & ZON2009-00019 – City zone change from SF-5 Single-family Residential (“SF-5”) to GO General Office (“GO”) and amendment to DP-11 to add three lots to the CUP Community Unit Plan and rezone the lots to GO General Office; generally located north of Central Avenue, east of Socora (854 North Socora). (District V)

ORDINANCE NO. 48-385

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

Amendment to Charter Ordinance 202 Section 8(c); Amendment to Section 1.04.070; and Creating Section 1.04.075 of the Code of the City of Wichita setting forth costs in the Municipal Court.

ORDINANCE NO. 48-386

An ordinance amending section 1.04.070 of the code of the City of Wichita, Kansas pertaining to costs and witness fees in cases before the Municipal Court.

ORDINANCE NO. 48-387

An ordinance creating Section 1.04.075 of the code of the City of Wichita, Kansas pertaining to costs for post conviction remedies in cases before the municipal court.

PARK USE AGREEMENT

Sedgwick County Park

THIS AGREEMENT is made and entered into this ____ day of _____, _____, by and between Sedgwick County, Kansas, hereinafter referred to as "County," and the **City of Wichita Police Department**, hereinafter referred to as "Licensee."

WITNESSETH:

WHEREAS, County controls, manages and operates Sedgwick County Park, hereinafter referred to as "Park"; and

WHEREAS, Licensee has requested use of a portion of Sedgwick County Park for the purpose of hosting a **"National Night Out Concert and Family Event"** to be held **August 2, 2009**.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto agree to be bound by this Agreement as follows:

SECTION 1. USE GRANTED. County does hereby grant to Licensee exclusive use of a portion of the Park for the purpose of hosting a **"National Night Out Concert and Family Event"** to be held August 2, 2009 from 3:00 p.m. to 8:00 p.m. Said use shall be limited to the portion of the Park shown highlighted on the attached Map, Exhibit A. Said attachment is incorporated herein as if set out in full. For purposes of preparing the premises and for taking down equipment and materials, Licensee will have exclusive use of the premises on August 2, 2009 from 8:00 a.m. to 10:00 p.m.

Licensee agrees to coordinate with Park Superintendent, or his designee, concerning any conditions he may have for the use of any property under his management and control. Park Superintendent or his designee has final authority as representative of County to interpret compliance with Park rules pursuant to the provisions of Sec. 20-106 through 20-121 of the *Sedgwick County Code* and any subsequent amendments thereto.

SECTION 2. FEES AND DEPOSIT. Fees and deposit for usage of the premises are waived.

SECTION 3. INDEMNIFICATION. Subject to the limitations of the Kansas Tort Claims Act, each party agrees to fully indemnify, defend, and hold harmless the other party, its officers, agents, employees, invitees and volunteers from and against any and all loss, damage, liability, claim, demand, or cause of action whatsoever arising out of or resulting from or alleged to have arisen out of or resulted from any negligent act or omission or willful misconduct of the indemnifying party, its officers, employees, independent contractors, or representatives in the performance of this Agreement.

SECTION 4. NOTICE OF CLAIM. County shall give to Licensee notice of any claim made or litigation instituted, which directly or indirectly contingently or otherwise in any way affects or might affect it. Licensee shall have the right to compromise and participate in the defense of the same to the extent of its own interests.

SECTION 5. DEFACEMENT OF PREMISES. Licensee shall not injure, nor mar, nor in any manner deface the Park premises or any equipment contained therein, and shall not cause or permit anything to be done whereby the said premises or equipment therein shall be in any manner injured, marred or defaced; and will not drive or permit to be driven nails, hooks, or screws into any part of said building or equipment contained therein and will not make nor allow to be made any alterations of any kind to said building or equipment contained herein.

SECTION 6. PREPARATION AND RESTORATION OF PREMISES. Licensee shall be responsible for preparation of the use area of Park for the above-stated event and shall also be responsible for the removal of all equipment, trash, debris, or other material of any kind or nature whatsoever that is brought in or left by any of its members, agents, servants, employees, guests, invitees, and participants. Licensee agrees to place on the premises prior to the event an additional fifty (50) trash receptacles and to remove them no later than the day after the event.

SECTION 7. VENDORS. Licensee agrees to require all vendors operating at said event to pay promptly all applicable taxes, excise or license fees and to obtain all licenses or permits for use of the licensed premises as required by federal, state or local laws and ordinances. Licensee agrees to provide evidence of same to Licensor on request. Licensee agrees that vendors will not offer cereal malt beverage or alcoholic beverages.

SECTION 8. SECURITY. Licensee agrees to provide (at its own expense) security for the event as required by the Sedgwick County Sheriff's Office.

SECTION 9. DISCRIMINATION PROHIBITED. Licensee will not on the grounds of race, color, sex, religion, physical handicap, national origin or ancestry discriminate or permit discrimination against any person or group of persons in any manner prohibited by law.

SECTION 10. ADDITIONAL EVENTS. Licensee shall not hold, provide or sponsor any events in addition to the use granted at Section 1 hereof which require the exclusive use of a designated area of Park without first having entered into a written agreement with County for such use.

SECTION 11. NOTICE. For purposes of this Agreement, notice shall be sent to:

Licensee

City of Wichita Police Department
Contact: Joe Seitz
455 N. Main

Wichita, KS 67202

County: Sedgwick County Counselor
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203

SECTION 12. COMPLIANCE WITH LAWS AND REGULATIONS.

Licensee agrees to comply with all laws, ordinances and regulations adopted or established by federal, state or local governmental agencies or bodies. Licensee agrees to abide by all rules and regulations of Park and by any and all resolutions of the Board of County Commissioners governing said Park. Park Superintendent or his designee has final authority as representative of County to interpret compliance with Park rules pursuant to the provisions of Sec. 20-106 through 20-121 of the *Sedgwick County Code* and any subsequent amendments thereto.

SECTION 13. PUBLIC FORUM. Licensee acknowledges and agrees that the park premises (including the licensed premises) is a traditional public forum and that County will make no efforts to exclude or prohibit First Amendment activities. Should Licensee wish to exclude persons from the licensed premises, Licensee shall: 1) clearly fence off, outline, partition or otherwise demarcate licensee's area of exclusive use; 2) post readily apparent notice to the public that occupancy of the particular demarcated area is prohibited unless authorized by Licensee; and 3) post a legible copy of this agreement in a conspicuous place near the licensed premises.

SECTION 14. UNAVOIDABLE HAPPENING. If, for any reason, an unforeseen event occurs, including, but not limited to fire, casualty, labor strike, or other unforeseen occurrence, which renders impossible the fulfillment of any term of this Agreement, the Licensee shall have no right to nor claim for damages against County.

SECTION 15. CANCELLATION. This Agreement may be canceled and terminated at any time by mutual Agreement, or by either party upon giving thirty (30) days notice of the cancellation to the other party.

SECTION 16. MODIFICATION. This Agreement may be modified, changed, or amended only as may be mutually agreed in writing between County and Licensee.

SECTION 17. ENTIRE AGREEMENT. It is understood that this Agreement supersedes and cancels any and all prior existing arrangement between the parties hereto and their predecessors concerning the uses provided for herein. Any matters not expressly provided for in this Agreement will be at the sole discretion of County.

SECTION 18. ASSIGNMENT. It is understood and agreed that Licensee shall not sell, assign or transfer any of its rights or privileges granted hereunder without the prior written consent of County.

SECTION 19. PUBLIC SAFETY. Licensee agrees that at all times, activities conducted will be with full regard to public safety, and licensee will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with County to assure such safety.

Licensee agrees not to bring onto the premises any material, substances, equipment, or object which is likely to endanger the life of, or to cause bodily injury to, any person on the premises or which is likely to constitute a hazard to property thereon without the prior approval of the County. County shall have the right to refuse to allow any such material, substances, equipment or object to be brought onto the premises and the further right to require its immediate removal therefrom if found thereon.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by signature of their duly authorized officers the day and year first above written.

LICENSEE
City of Wichita Police Department

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

Norman Williams

Kelly Parks, Chairman

ATTEST:

Kelly B. Arnold. County Clerk

APPROVED AS TO FORM:

Karen L. Powell, Assistant County Counselor

**City of Wichita
City Council Meeting
July 28, 2009**

TO: Mayor and City Council Members

SUBJECT: National Night Out Concert and Family Event Agreement

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve the Park Use Agreement between the City of Wichita and Sedgwick County.

Background: The Wichita Police Department (WPD) and Radio Fiesta are co-hosting a “Family Concert in the Park” as part of the National Night Out 2009 celebration on August 2, 2009 from 3:00 p.m. to 8:00 p.m. at Sedgwick County Park. Sedgwick County has agreed to enter into a Park Use Agreement with WPD, granting WPD exclusive use of a portion of the park for the purpose of co-hosting this event.

National Night Out events are designed to:

1. Heighten crime and drug prevention awareness;
2. Generate support for, and participation in, local anticrime programs;
3. Strengthen neighborhood spirit and police-community partnerships; and
4. Send a message to criminals letting them know that neighborhoods are organized and fighting back.

Analysis: Under the Park Use Agreement, each party agrees to fully indemnify, defend, and hold harmless the other party, its officers, agents, employees, invitees and volunteers from and against any and all loss, damage, liability, claim, demand, or cause of action whatsoever arising out of or resulting from or alleged to have arisen out of or resulted from any negligent act or omission or willful misconduct of the indemnifying party, its officers, employees, independent contractors, or representatives in the performance of this Agreement.

Financial Considerations: As part of the Park Use Agreement, Sedgwick County Commission is expected to waive all rental fees for this event at their next meeting prior to the event. If not, concert sponsors will cover the fees.

Goal Impact: The National Night Out Concert and Family Event supports the City of Wichita’s Safe and Secure Initiative by enhancing the Wichita Police Department’s commitment to community policing, which stresses proactive and preventative law enforcement in partnership with citizens, in an effort to prevent, solve, and reduce crime, and address quality-of-life issues within the community.

Legal Considerations: The Park Use Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Park Use Agreement.

Attachments: Park Use Agreement.